THE LAW OF THE UNIVERSITIES

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BY

JAMES WILLIAMS

D.C.L. (OXFORD), LL.D. (YALE)

BARRISTER-AT-LAW, FELLOW OF LINCOLN COLLEGE, OXFORD
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PREFACE

THIS is an attempt to do what has hardly been done before in England, to collect in one volume the law which at present can only be found in numerous unconnected authorities. The reports have been carefully searched, and it is hoped that no decision of importance has been overlooked.

J. W.

OXFORD.

1st December, 1909.

TABLE OF CONTENTS

ABBREVIATIONS

A. & E.	Adolphus & Ellis.
Abr. Cas. Eq	Abridgment of Cases in Equity.
A. C.	Appeal Cases.
A.-G.	Attorney-General.
Atk.	*Atkyns.*
B. & C.	Barnewall & Cresswell.
B. & P.	Bosanquet & Puller.
B. & Ad	Barnewall & Adolphus.
Beav	Beavan
Bro. P. C.	Brown's Parliamentary Cases.
Brownl.	Brownlow.
Bulstr.	Bulstrode.
Bunb.	Bunbury.
Burr.	Burrow.
C. & F.	Clark & Finelly.
C. & P.	Carrington & Payne.
Carth.	Carthew.
Cas. in Ch.	Cases in Chancery.
C. B. N. S	Common Bench, New Series.
Ch.	Chancery.
Ch. D.	Chancery Division.
Cowp.	Cowper.
C. P.	Common Pleas.
C. P. D.	Common Pleas Division.
Co. Litt.	Coke upon Littleton.
Cro. Car.	Croke's Reports *temp.* Charles I.
Eq.	Equity.
Ex. or Exch.	Exchequer.
F. & F.	Foster & Finlason.
Fitz. N. B.	Fitzherbert's *Natura Brevium.*
Gilb.	*Gilbert.*
Godb.	Godbolt.
Grant	Grant on Corporations.
Hardr.	Hardres.
H. L.	House of Lords.
Hob.	Hobhouse.
I. R.	Irish Reports.

Jac.	Jacob.
K. B.	King's Bench.
K. B. D.	King's Bench Division.
L. J.	Law Journal.
Leon.	Leonard.
L. R.	Law Reports.
M. & G.	Manning & Grainger.
M. & W.	Meeson & Welsby.
Mar.	Merivale.
Mich.	Michaelmas.
Mod.	Modern Reports.
Myl. & Cr.	Mylne & Craig.
Myl. & K.	Mylne & Keen.
N. Y.	New York.
Nebr.	Nebraska.
P.	Probate.
Phill.	Phillips.
Q. B.	Queen's Bench.
Q. B. D.	Queen's Bench Division
R.	Rex or Regina.
Ld. Raym.	Lord Raymond.
T. Raym.	Sir T. Raymond.
Rep.	Coke's Reports.
Russ.	Russell.
Russ. & M.	Russell & Mylne.
Salk.	Salkeld.
S. C.	Court of Session Cases.
Sim. & St.	Simeon & Stuart.
Skin.	Skinner.
Str.	Strange.
St. Tr.	State Trials.
Tenn.	Tennessee.
T. R.	Term Reports.
V. & B.	Vesey & Beames.
Vent.	Ventris.
Ves. Sen.	Vesey Senior.
Ves. or Ves. Jun.	Vesey Junior.
Vern.	Vernon.
Vin. Abr.	Viner's Abridgment.
W. Bl.	William Blackstone.
Wils.	Wilson.
W. N.	Weekly Notes.
Y. & C.	Young & Collyer.
Y. B.	Year Book.

TABLE OF CASES

BIBLIOGRAPHY

[ONLY the principal authorities are collected below. Many others will be found in the text and notes. A complete bibliography would be almost impossible, the indirect material is so abundant.]

GENERAL.—There are very few works dealing directly with the law of a university or universities. Almost the only modern one discovered by the writer is a Danish, Matzen, *Kjobenhavn's Universitets Retshistorie* (Copenhagen, 1879). T. Braga, *Historia da Universidade de Coimbra* (Lisbon, 1892–95), contains much law, as might be expected in the history of an essentially legal university written by an eminent jurist. A complete bibliography of the earlier authorities will be found in H. Rashdall, The Universities of Europe in the Middle Ages (1895), but the work does not treat of foundations later than 1500. Denifle ends a century earlier in his *Die Entstehung der Universitäten des Mittelalten bis* 1400 (1885 *et seq.*). Grant on Corporations (1850), collects the decisions on colleges up to that date on p. 551. They have all been incorporated in the following pages. Other works are Mendo, *De Jure*

Academico (1668); J. Colbatch, *Jus Academicum* (1722); Ante-Commission Statutes of Oxford and Cambridge (published by the Royal Commission in 1853); J. Griffiths, Collection of Enactments in Parliament specially concerning the Universities of Oxford and Cambridge (1869); S. R. Laurie, Lectures on the Rise and Early Constitution of Universities (1886); London Gazette and Index to Statutory Rules and Orders; Works dealing with Mortmain and Charitable Uses, such as Tudor and Bristowe, and with Contract, Tort, and Evidence.

OXFORD.—The only professedly legal works seems to be those of Vaughan Thomas, Legality of the Academical System of the University of Oxford asserted (1831, 2nd edit., 1853), and the appendices by Dampier to J. Heywood, Recommendations of the Oxford University Commissioners (1853), and to the report of the Commissioners itself (1852). For the earlier law H. Anstey, *Munimenta Academica* (1868), and many of the volumes of the Oxford Historical Society (especially *Collectanea*, vol. ii., article by Professor Holland, K.C., on the early history of the university), may be consulted. The statutes of the Commission of 1877 were published in 1882. The *Statuta Universitatis Oxoniensis* appear annually. The pre-Laudian statutes were published in 1634 under the name of *Statuta Universitatis Oxoniensis*, the Laudian statutes of 1636 were translated by G. R. M. Ward (1845), and abridged in *Parecbolae sive Excerpta e Corpore Statutorum*

(1729). There are several works on college statutes, such as R. Newton, Rules and Statutes for the Government of Hertford College (1747); G. R. M. Ward, The Statutes of Magdalen College (1840), of All Souls, Magdalen and C.C.C. (1843); J. Heywood, Foundation Documents of Merton College (1843). Many cases incorporated in the text of the present work will be found in the ponderous works of Antony Wood, and in the numerous histories of the university from Ayliffe (1714), to Sir H. Maxwell-Lyte and the Hon. G. C. Brodrick (both 1886). The same is the case with college histories from Savage, *Balliofergus* (1668), down to the generally excellent series of college histories published in and after 1898 by Mr. F. E. Robinson. Lord Curzon, University Reform (1909), will be read with advantage.

CAMBRIDGE.—The mass of material is not as great as for Oxford, but is still considerable. *Statuta Antiqua* (edit. 1783 and 1852), and Documents relating to the Universities and Colleges of Cambridge (1852), seem practically the same thing under different names; G. Dyer, Privileges of the University of Cambridge (1824), is very like a predecessor of the Oxford later work of Anstey; E. C. Clark, Cambridge Legal Studies (1888), will be found interesting for the development of the three law degrees known at Cambridge. The earlier histories of Dr. Caius (1568), T. Fuller (1655), and G. Dyer (1814), are superseded by more recent and scientific

work by Mr. J. B. Mullinger extending from the earliest times, culminating in the History of the University of Cambridge (1888). The F. E. Robinson series exists for Cambridge. There are some earlier, as at Oxford, and perhaps more substantial. Probably the earliest is a little later than *Balliofergus*, viz. R. Masters, History of Corpus Christi College (1753, continued by J. Lamb, 1831). Well-known ones are the histories of St. John's College by J. E. B. Mayor (1869), and by C. C. Babington (1874). Oxford has nothing on the scale of J. Venn, Biographical History of Gonville and Caius College (3 vols., 1902). The *Statuta Academiae Cantabrigiensis* and the ordinances are published at intervals.

SCOTLAND.—Each of the universities has found a historian, sometimes more than one. The main authorities are Sir A. Grant, Story of Edinburgh University (1884); W. Stewart, The University of Glasgow, Old and New (1892); J. M. Anderson, History of St. Andrews University (1878 and 1883); R. S. Rait, The Universities of Aberdeen (1895). Some of the original documents have been published, such as *Munimenta Universitatis Glasguensis* (1854).

IRELAND.—W. B. S. Taylor, History of Dublin University (1845); The Book of Trinity College, Dublin, 1591–1891 (1892); W. M. Dixon, History of Trinity College, Dublin (1902); Archbishop J. Healy, Maynooth College, its Centenary History, 1795–1895 (1895).

UNIVERSITY LAW

INTRODUCTION

A UNIVERSITY has been defined in more than one way. The English statutes and reports contain no definition. It will be necessary to accept definitions by non-legal writers. These do not agree, but the tendency is the same. The earliest is perhaps that of the *Siete Partidas*, ii, 31 (13th cent.), *estudio es ayuntamiento de maestros e de escolares que es fecho en algund lugar con voluntad e entendimiento de aprendar los saberes.* Brissonius says *universitates appellantur collegia et corpora* (*a*). Calvinus simply copies this (*b*). Du Cange does not help much by defining as *academia publica.* Cardinal Newman attempts a definition which may meet the case of a modern university if it possess all the faculties, but is too broad for the Paris and Bologna of the Middle Ages. It is a place of teaching universal knowledge (*c*). With Carlyle the true university is a collection of books. Dr. Rashdall confines himself to telling us what a university is not.

(*a*) *De Verborum Significatione* (1598).
(*b*) *Lex Juridicum* (1684).
(*c*) *The Idea of a University*, p. 1.

The statement of the *Siete Partidas* is useful as directing attention to the three stages through which most ancient universities seem to have passed (*d*). Oxford and Cambridge were not originally corporations. They began as *scholae* or *studia particularia*, fortuitous gatherings of teachers and students in a suitable place. The next stage was the *studium generale*, *commune* or *universale* (*e*), a guild of masters or doctors with control over the admission by degree to their own body. The latest and present stage is the *universitas* or *universitas studii* or *universitas studentium* or *scholarium*, a corporate existence with well-defined constitution and privileges, Bologna being specially *alma studiorum mater* (*f*). There is perhaps a sense of locality in *studium* which is wanting in

(*d*) Perhaps the least fruitful attempt at a definition is that of the College Charter Act, 1871, "any institution in the nature of a college or university."

(*e*) The use of *studium* in the *Corpus Juris Civilis* is, like the use of *universitas*, analogous but not synonymous. *Universitas* signifies a group or combination of rights and duties, then transformed to a group or combination of persons invested with rights and duties, something approaching, but not co-extensive with, the modern corporation. In Bracton (171b), the King is *universitas regni*. In Dante (*De Mon.*, i, 9), *universitas humana* seems to mean human nature as a whole. In Marsilius *universitas civium* is the inhabitants of a particular state, whose effect on the development of law approaches the *Gesammtwille* of Savigny. In some mediæval charters and bulls *universitas*, or *universitas vestra*, has the signification of *universi in Christo fideles*. The Bull of 1318 (see below) calls the graduates of Cambridge *universitas*. In the Theodosian Code, but not in Justinian, *studium* approaches its mediæval sense. In xiv, 1, 1, *Moenibus* and *locus* occurs; in xiii, 3, 5, *magistri studiorum*; and in xiii, 4, 1, [illegible] is a *studium*. The *studium facultatum* of xiv, 3, 4, seems [illegible] at first sight, but it really means desire of wealth.

(*f*) The inscription on the city seal is *Petrus [illegible] Paulus [illegible] quæ Bononia mater*.

universitas. It is perhaps not an accident that *universitas* began to develop out of *studium* just about the time when Innocent IV created the modern corporation as a fictitious person, especially the corporation sole, from Roman law elements (*g*). It was no longer the *persona incerta* or *corpus incertum* of the classical jurists, and had greater capacity of holding property. About then the Crown devolved by demise; King ceased to follow King as an individual whose title dated only from his coronation. This was about 1238; the term was used of Paris in 1209, of Oxford in 1230. It has been used of the Inns of Court, both Fortescue, Coke, and Selden calling them universities for the study of law (*h*). In some cases *universitas* might mean a faculty within the university, *e.g.*, *universitas professorum juris canonici*, a phrase which reminds of Doctors' Commons before 1858. Lyndwood (about 1420)

(*g*) Maitland's Gierke (1900), p. xix. A college is a *persona*, *Case of Magdalen College* ([1665] 1 Mod. 163). Of the corporation aggregate the common seal is the *indicium*. The corporation sole needs none. Forgery of the common seal is felony punishable by seven years' penal servitude, 8 & 9 Vict., c. 113, s. 4.

(*h*) In some respects they are still parallel. No authority can compel an Inn of Court to admit a person as a member, just as no authority can compel admission of a commoner to a college or university. An Inn of Court cannot be compelled to call to the Bar just as a university cannot be compelled to admit to a degree (*R.* v. *Bird's Inn* [1750], Douglas, 339). But in the former case there is an appeal to the Judges as quasi-visitors, in the latter there seems to be no appeal. The Inns of Court bear a certain resemblance to the Oxford halls. An important difference is that they have no written constitutions like the *Statuta Aularia*. Their influence probably grew through the failure of the universities to teach English law, their teaching, as Fortescue, c. 48, says, being confined to the Latin tongue.

uses the phrase *universitas studentium*. Cambridge has always preferred *academia* to *universitas*; the official volume of statutes is called *Statuta Academiæ Cantabrigiensis*. With the right of *studium generale* usually followed that of *jus* or *facultas ubique docendi*, and there is no doubt that the medieval student wandered for his lectures much more than does his modern representative, *e.g.*, the oldest statutes of Peterhouse contemplate the possibility of scholars of that college studying at Oxford. As time went on, *jus ubique docendi* was conferred by grant of monarch or Pope, but in its origin must have rested on general acquiescence. There appear to be three types of universities,—that of students, as Bologna; that of masters, as Paris and Oxford; and that of Crown grant or Papal bull, such as the Spanish and Scottish.

As to colleges, the phrase *collegium* has had a somewhat similar history. It is a technical term of civil and canon law. Originally it denoted a guild or combination of persons, military or civil, at least three in number at its formation (*i*), the corporation sole, such as the Chancellor of the university, being a canonist refinement. The members of a *collegium* were *sodales* or *collegae*, and its by-laws were *leges*. These *collegia* at Constantinople were mostly trade-guilds (*k*). It was not till later that they tended to become [illegible] confined to

(*i*) See the opinion of N[illegible] 95.
(*k*) It is remarkable that [illegible] appear to be used synonymously.

educational bodies. An educational college has no necessary connection with a university, *e.g.*, Eton, Westminster, Dulwich. There still exist non-educational colleges, such as the College of Justice in Scotland, the College of Arms, the Morden College, and some ecclesiastical corporations like the College of Manchester (*l*). But all alike *ex vi termini* import a corporation at the present day (*m*). Some of the writers who have declined to define university have been less cautious as to college. Jenkins defines it as *societas plurium corporum simul habitantium* (*n*). With Calvinus *collegium, corpus, universitas, conventus, idem saepe significant.* The definition given in the *New English Dictionary* is "A society of scholars incorporated within or in connection with a university or otherwise formed for the purposes of study and instruction." *Collegium bezeichnet eigentlich die gemeinden Beauftragten,* is the description rather than the definition of L. Mitteis, *Römisches Privatrecht,* i, 393 (Leipsic, 1908). S. 15 of the Universities of Oxford and Cambridge Act, 1877, regards both a university and a college as places of "education, religion, learning, and research." S. 24 of the Education Act, 1902, includes under

(*l*) See 2 Geo. II, c. 29. Bodin calls the House of Commons a collegium.

(*m*) *Phillipps v. Bury* ([1747], 2 T. R., 358). Probably no head of a house is at the present day a corporation sole, but it seems probable from the report that in 1814 the Provost of Queen's, Oxford, was so. *Sir. Agarup's Case,* 11 Rep. 18. The Master of Pembroke, Oxford, was created a corporation sole by letters patent of Charles I, Grant,

(*n*) Continued 358, 77.

college "any educational institution." Jenkins' definition and that of the Act appear to be too extensive, as it would include the old unendowed Oxford halls, formed by voluntary coalescence of students who paid their own tutors and chose their own head. Sometimes they were erected into colleges, like Broadgates (*o*) and Gloucester Halls; sometimes the colleges absorbed them, as in the case of Magdalen Hall and St. Alban Hall. The only one surviving is St. Edmund Hall; Wycliffe and Ridley Halls are not halls in this sense. They are regulated by the *Statuta Aulularia*, mostly of 1885, Oxford Statutes xxii. In their history the *hospicia* of Paris were parallel, except that at Paris the colleges have become extinct as well as the halls (*p*). A college may exist by reputation (*q*), and so no doubt may a university. In a return to a mandamus Oxford or Cambridge returns itself as existing by prescription (*r*), in spite of the incorporation of the universities by 13 Eliz., c. 29.

It is impossible to fix any date, as can be done in the case of the Scottish and later English

(*o*) This hall, and possibly others, possessed the legal privilege of sanctuary. See Encyc. Brit., *s.v.*

(*p*) Relics of the collegiate system still exist on the Continent. There is the College of Spain at Bologna, and the Colleges of Salamanca and Valladolid are mentioned by José Isla in *Frey Gerundio*, i, 1.

(*q*) *Adams and Lambert's Case* ([1662], 4 Rep. 103). The word *domus* sometimes occurs in college statutes as equivalent to *collegium*, and denoting something more than the mere building. See, for instance, the old statutes of Peterhouse as set out in the report of *R. v. Bishop of Ely* ([1788], 2 T. R. 290).

(*r*) *R. v. Chancellor of Cambridge* ([1725], 2 Strange, 817).

universities, at which Oxford and Cambridge began In
to be universities. The legends of Arviragus (*s*), Bladud (*t*), Arthur and Alfred (*u*), were the creations of the same habit of mind which produced the forged decretals and the donation of Constantine, and attributed the foundation of Bologna to Theodosius II and of Paris to Charles the Great. We are not on firm ground until the thirteenth century. It is a hypothesis more than probable that Oxford arose from direct migration from Paris in 1167, and Cambridge in the same way from Oxford in 1209 (*x*). The earliest reported case in the authorised reports is in 1292, the earliest statute in 1413. The earliest university statute is in 1252. The college system, implying corporate self-government, the distinguishing feature of Oxford and Cambridge, became fully established after the foundation of Merton. In England the faculties had no corporate existence, as at Paris, and as the Faculty of Advocates and at one time Glasgow. The House of Lords so decided in *University of Glasgow* v.

(*s*) Prynne attributes the date of the foundation of Oxford to Arviragus, A.D. 70.

(*t*) According to Twyne, he established *gymnasia* at London, Stamford, and Cambridge.

"Stamford he made so called to this daie
In which he made a universitie."

(*u*) In a petition to Lord Apsley, L.C., as visitor one of the allegations was that university was founded by Alfred in 872 (*Davison's Case* (1772), Cowp. 819). This is as authentic as the date of 915 fixed for Cambridge.

(*x*) At one time there was considerable controversy as to priority of foundation. See for instance Dr. Caius, *De Antiquitate Cantabrigiensis Academiæ* (1568).

Faculty of Physicians of Glasgow, [1846], 7 C. & F. 958. This gave the faculty disciplinary right over its members. Few medieval universities had the four faculties in full (*y*). The statutes of Merton, framed in 1274 and confirmed by Papal bull in 1281, became the model on which those of most other colleges were based (*z*). Like other original statutes they were framed by the founder (*a*), whether the Crown, a private person, or a guild, as in the case of Corpus, Cambridge (*b*). Statutes were confirmed or altered from time to time by the authority of the Pope or his legate (*c*), the Crown (*d*),

(*y*) The mnemonic lines as to the faculties were:—

Hic florent artes, caelestis pagina regnat,
Stant leges, lucet jus, medicina viget.

(*z*) New College statutes formed another model, and there is judicial authority that the statutes of King's were borrowed from them. *Case of Commendams* [1612], Sir J. Davis, 68. The earliest Cambridge college statutes were those of Michaelhouse (1324), now merged in Trinity. Merton statutes made no provision for tuition in the modern sense; that came with New College.

(*a*) It appears from *R.* v. *Dulwich College* ([1851], 21 L. J., Q. B. 36), that the founder may, by the instrument of foundation or the statutes, give a vote to non-members of a corporation to vote in the election of a corporate officer, in this case the warden.

(*b*) Some of the titles of heads of colleges, such as "Master" and "Provost," were perhaps suggested by the guilds.

(*c*) Bulls usually exempted universities from episcopal visitation and granted the *jus ubique docendi*. They sometimes conferred degrees; a relic of the Papal degree is the "Lambeth" degree still conferred by the Archbishop of Canterbury, who before the Reformation was *legatus natus*. A bull of John XXII in 1318 recognised Cambridge as *studium generale*, and one of Martin V in 1430 confirmed its privileges. The bull of Boniface IX, exempting Oxford from the visitation of the Archbishop of Canterbury, was declared invalid by Parliament in 1441 (Griffiths, 1). Of bulls dealing with colleges, examples are those of 1364 for Balliol and 1392 for New College. A legatine sentence of 1214 as to Oxford is interesting as containing the

or parliamentary, university and college legislation (*e*). The courts have no jurisdiction to do anything in the nature of imposing new statutes by an amending scheme. College statutes were earlier in date than statutes of the realm dealing with the same subject, and, imperfect as they sometimes were, honestly attempted to make a college a place of learning (*f*). The earliest statute of the realm is 1 Hen. V, c. 1 (1413), by which all Irishmen and Irish clerks, beggars called chamberdeacons (probably the "hedge-priests" of a later age), except graduates in the schools and certain others, are to be voided out of the realm. This was repealed for England in 1863 and for Ireland in 1872. A little later, 9 Hen. V, c. 8 (repealed in 1863), forbad scholars at Oxford to hunt at night. A curious Act is 1 Hen. VI, c. 3 (also repealed in 1863), the preamble of which states that Irish students came to Oxford and resided there *a grande peure de tout manere people demeurant la environ*. The Act then goes on to provide that scholars of Ireland dwelling in England must find

basis of future immunity (1 Wood, 184). Few of the bulls deal with education. Wood mentions one of Innocent IV to Bishop Grosseteste in 1246, enjoining Oxford to permit none to teach nisi *secundum morem Parisiensem*. One of the popes (Alexander V) was a B.D. of Oxford. Decretals, i, 38, 8, allowed a *universitas scholarium* to appear by *procurator*.

(*d*) As by the injunctions of 1535 and by the statutes of University College, framed in 1736, after a disputed election to the Mastership in 1726.

(*e*) As by the Oxford University Statutes Act, 1869 (repealed 1888), confirming certain university statutes of doubtful validity.

(*f*) The dictum of Yates, J., is surely wrong: "Improvement in learning was no part of the thoughts or attention of our ancestors" [1766], *Millar* v. *Taylor*, 4 Burr. 2387.

security for good behaviour and bring testimonials from the Lieutenant of Ireland. 3 Edw. IV, c. 5 (also repealed in 1863), exempts graduates of the universities from the sumptuary provisions of the Act as to apparel. The earliest unrepealed statute is 3 Hen. VIII, c. 11 (1511–12).

As fresh colleges were founded codes of statutes were framed, dealing, as did those of Merton, with endowment, government, education, and discipline. The only exception was Christ Church, the draft statutes of which were never adopted, and up to 1858 that college was governed by orders of the Dean and Chapter. The making of statutes depended on the inherent power of a corporation to make by-laws (*g*). The early statutes, both of universities and colleges, included very minute sumptuary laws, of which traces still remain. A statute of 1564 enacted that no fellow or scholar should wear a shirt of a certain size without embroidery of gold and silver. One of the Laudian statutes forbad undergraduates to hear cases in courts of justice under pain of a fine, and graduates *nisi ex causa rationabili*. In 1679 the Vice-Chancellor prohibited the sale of coffee on Sundays until after evening prayer. The original statutes of Queen's contained detailed regulations as to the strength and quality of the *potagium congruum et competens* supplied to the fellows. Tournaments, hounds, dice and chess, were forbidden by various

(*g*) A curious case is *Magdalen College* v. *Ward*, [1889] 1 C. P. Cooper, 266, where an injunction to restrain a translation of the MS. Latin statutes of the college was refused.

statutes (*h*). William of Wykeham's statutes forbad Int dancing in the college for fear of damage to the reredos. The statutes of the now dissolved Hertford discommoned any tradesman who allowed an undergraduate member of the college to obtain credit for more than five shillings. Licences to undergraduates to support themselves by begging in the vacations were also the subject of several statutes.

Up to recent times there seems to have been considerable disregard of the statutes by the Crown, the Chancellor, and the colleges. Fellowships were bought and sold, and corrupt resignations were not unknown. The principal codes of university and college statutes before recent legislation were those promulgated for Cambridge in 1570 and for Oxford in 1636, the latter generally known as Archbishop Laud's (*i*). These codes, amended from time to time, were in force until superseded by the statutes framed under the parliamentary powers given to Oxford in 1854, to Cambridge in 1856 (*k*). Up to those dates it had been a common form that members of the governing bodies should swear that they would not be parties to altering the statutes of their respective foundations (*l*). At present the statutes by which

(*h*) In spite of sumptuary provisions degrees remained expensive for a long time, though the days are past when a candidate at Oxford gave a feast to his examiners, and inception at Salamanca meant paying for a bull-fight.

(*i*) Edited by Griffiths and Shadwell (1888).

(*k*) The Oxford Commission of 1850 still thought it doubtful how far the university had power to alter the Laudian statutes. Report, p. 6.

(*l*) The Crown cannot pardon offences against statutes. *Bentley* v. *Bishop of Ely* [1725], 2 Strange, 912.

the universities and colleges are bound are those framed in accordance with the Oxford and Cambridge Universities Act, 1877. To this there are three exceptions, Lincoln (*m*), Hertford (*n*), and Keble (*o*), which are partly, though not entirely, unaffected by recent legislation. The new statutes of Oxford were published in 1882, of Cambridge in 1883. Since the powers of the commissioners under the Act of 1877 ceased in 1881, amending statutes have been framed from time to time by the colleges themselves, subject to the approval of the Crown in Council.

Colleges were originally founded in most cases for heads, fellows (*p*), and scholars. But Oriel, and perhaps others, had no scholars until recent times. The first donor is in law the founder (*q*). The head and fellows are generally the governing body. Exceptions are Christ Church, Downing, and Keble (*r*). At Christ Church the chapter has co-ordinate powers. At Downing certain professors

(*m*) On 12th May, 1882, the then Bishop of Lincoln (Dr. Wordsworth), as visitor of the college, moved an address to the Crown praying that its assent might be withheld from the draft statutes. This was carried in the House of Lords (Hansard, cclxix, 529).

(*n*) Hertford is for the most part unaffected by the University Tests Act. See *It.* v. *Hertford College* ([1878], 3 Q. B. D. 693).

(*o*) Keble has no statutes in the proper sense of the word, though it may have regulations.

(*p*) *Socii* was in one case regarded as including *socii promoti*, or ex-fellows, for the purpose of deciding the eligibility of the Provost. *Queen's College Case* ([1704], 2 T. R., 825).

(*q*) *Sutton's Hospital* (*Charterhouse*) *Case*, [1613], 10 Rep. 1.

(*r*) Selwyn is only an apparent exception. Though called a college, it is technically a "public hostel." Mansfield and Manchester are post-graduate seminaries under the management of nonconformist committees. So is Westminster at Cambridge.

are on the governing body. Keble has no fellows, In their place is taken by a nominated council. The head is generally elected by the fellows, except in the cases of Christ Church and Trinity, Cambridge, both nominated by the Crown, Magdalene, nominated by the visitor, and Keble by the Council. The fellows are usually co-opted, except one at Lincoln appointed by the visitor. The admission of commoners and pensioners, not on the foundation, appears to have been of later date than that of scholars. New College, Magdalen, and Corpus, Oxford, had no commoners for centuries, and every member of All Souls is or has been on the foundation.

A university or college has a discretion as to whom it will admit. There appears to be no general right of admission, enforceable by mandamus or otherwise (*s*). A university may refuse or deprive of a degree. Originally it was not the university which conferred the degree. The licence came from the Chancellor, the inception from the faculty (*t*). But at present the university combines the licence and the inception (*u*). In one Scottish (*x*) and one

(*s*) This appears to follow from the analogous case of an Inn of Court, and is, in fact, assumed in the judgment in *R.* v. *Lincoln's Inn* ([1826], 4 B. & C. 855).

(*t*) 2 Rashdall, 446.

(*u*) According to one of the Bentley cases, deprivation or degradation must be for reasonable cause and after summons. A contempt of the Chancellor's Court is not reasonable cause. *R.* v. *Chancellor of Cambridge* ([1723], 2 Strange, 566). The remedy, where there is any, is mandamus. It also lies for expulsion of a graduate. Lord Mansfield in *R.* v. *Askew* ([1857], 2 Burr. 186). See p. 56.

(*x*) *Johnston* v. *Glasgow University* ([1900], "Law Times,"

New York case (*y*) the Court refused to interfere; in a second New York case (*z*) it did interfere. The only English precedent is so old that it could hardly be considered an authority at the present day (*a*). In 1559 and 1563 bills were introduced to make a degree a necessary condition for the appointment of an ecclesiastical judge. As far as advocates were concerned, this was practically the rule until Doctors' Commons ceased to exist. Most Admiralty and ecclesiastical judges were taken from the advocates and had graduated as D.C.L. or LL.D. By so doing they were qualified to act as ecclesiastical judges under 37 Hen. VIII, c 17. In some cases degrees are necessary for ecclesiastical preferment (*b*).

The granting of degrees is not the peculiar privilege of a university. St. David's College, Lampeter, has the privilege, and so (within limits)

17th March, 1900), where Lord Stormonth Darling held that the university is justified in refusing the degree of M.A. to a student who had passed the examinations but not attended a sufficient number of classes.

(*y*) *People* v. *New York Homœopathic Medical College* (20 N. Y. Suppl., 879), the court refusing a mandamus to the college to issue a diploma which it had refused to the relator.

(*z*) The Supreme Court of New York held that a college had no right arbitrarily to refuse to examine a student for a degree, as there was an implied contract to grant the degree on the conditions being fulfilled. The court would not review a definite reason alleged, but in this case there was an arbitrary refusal ("Law Journal," 1891, 439). See a similar case in Paris (1 Rashdall, 470).

(*a*) In 1812 a mandamus issued to Cambridge to allow Robert Baketon to take his degree. Cited Sir T. Raymond, 109.

(*b*) See the *Bishop of Chester's Case* with relation to the Wardenship of Manchester (Oxford, 1721). The Ewelme Rectory Act, 1871, provided that the Crown can only appoint to that rectory a member of the Convocation of Oxford University, *i.e.*, one who is at least M.A. of that university.

has the Archbishop of Canterbury. There is no Int
necessary connection between a college and a university. In most countries the jealousy of the two led to the defeat of the colleges; exceptionally at Oxford and Cambridge the colleges held their own. There are instances of a university and college being combined; Glasgow College and Trinity College, Dublin, are instances. Where a university includes colleges, a person becomes a corporator in different ways; of a university by matriculation, of a college by election to an office on the foundation. Some of the Continental universities, *e.g.*, Oviedo, do not grant degrees.

OXFORD AND CAMBRIDGE

CHAPTER I

PREROGATIVE AND LEGISLATION

From the thirteenth century charters or letters patent under the Great Seal (*a*) had been granted to the universities and colleges, the earliest being attributed to John (*b*). They generally recognised university privileges as pre-existing, including some now obsolete, such as exemption from subsidy and purveyance. The most extensive privileges were those conferred on Oxford by the charter of 1523, issued at the instance of Wolsey. Charters were also granted to the colleges, to the earlier ones after they had been founded for some time, to the later at the time of their foundation. The Act of 1545 for the dissolution of colleges (37 Hen. VIII, c. 4),

(*a*) Not now with the additional formality of William the Conqueror's charter to the City of London, which was

Bitten with his tooth
In token of sooth.

The main difference between charters and letters patent is that the testing clause in the former is *hiis testibus*, in the latter *teste meipso*. See 2 Inst., 77.

(*b*) It was really a legatine ordinance. Anstey, 1; 2 Rashdall, 349.

enabled the Crown to found new colleges, such as Christ Church and Trinity, Cambridge (*c*). A corporation, the creature of the Crown, may exist by charter or by prescription, which presumes a charter, even in cases where historical evidence makes it morally certain that no charter ever existed (*d*). The grant of a charter is at the pleasure of the Crown, as long as it is not repugnant to common or statute law (*e*). A corporation may also be created directly or indirectly by Act of Parliament; in the latter case the Crown is empowered to grant a charter in a particular instance. The earliest college charter appears to be that of University in 1317, followed by Oriel in 1324. In some, as that of St. John's, Cambridge, there is a recital of the King's licence to hold lands in mortmain and a nomination of the original master and fellows. The charter generally gave the official name of the college, often different from the popular one. For instance, All Souls is "The College of the Souls of All Faithful People Deceased of Oxford."

At present when a new university or college is founded, the report and draft on application for a charter must by the College Charter Act, 1871, be laid before Parliament for not less than thirty days before the report is submitted to His Majesty. The

(*c*) The Chantry Act of 1547 (1 Edw. VI. c. 14) exempted from its operation colleges and chantries in the universities.

(*d*) The Crown may delegate its power of erecting corporations, as to the Chancellor of Oxford to incorporate matriculated tradesmen.

(*e*) It is on a charter of James I, of 12 March, 1603–4, that the representation in Parliament of Oxford and Cambridge depends.

charter once granted cannot be amended; it must be recalled by writ of *scire facias* or *quo warranto* or a supplemental charter granted (*f*). It may also be confirmed by *inspeximus*, of which there are many examples. There need be no surrender of an old charter before the grant of a new one (*g*). The acts of the corporation must conform to the charter, otherwise they are *ultra vires* and void, as if the university were to pass a statute conferring on the Chancellor's Court jurisdiction in probate (*h*). It was held in a famous American case that a charter was for some purposes a contract (*i*).

The law by which the universities were originally governed was, according to Lord Hardwicke in one of the Bentley cases, a compound of civil and canon law. Other authorities maintained that they were subject to civil law only (*k*). Be this as it may, canon law was an important subject of study in the English universities even after the injunctions of 1535, and doctors in canon law took precedence of all other doctors. At most colleges there were canonist fellows, and as lately as 1624 one of the objects of the foundation of Pembroke, Oxford, was the study of civil and canon law. The last

(*f*) For the grounds of refusal to seal a supplemental charter see *Ex parte Society of Attorneys*, [1872] L. R. 8 Ch. 168.

(*g*) *Case of the University of King's College, New Brunswick*, [1842], Forsyth, Cases and Opinions, 388.

(*h*) Every corporator is presumed to be aware of the constitution and statutes of his corporation. *R.* v. *Trevenen*, [1831], 2 B. and A., 339.

(*i*) *Dartmouth College* v. *Woodward*, [1819], 4 Wheaton, 518.

(*k*) As Chapman, Inquiry into the Right of Appeal (1752).

application for a degree in canon law seems to have been by C. Browne of Balliol in 1715. Nothing was done owing to the death of the applicant. The connexion of canon law with the universities was in full vigour by the time of the promulgation of the Decretals (1234), which were addressed to the universities of Paris and Bologna (*l*). The Reformation also marked the disappearance of the old *trivium* and *quadrivium* or *septem disciplinae* (*m*), and education broke with scholasticism.

The universities and colleges were not, as has already been said, allowed to legislate entirely for themselves, but were and are subject to the intervention of Parliament, the Crown both by virtue of the prerogative and—after the Reformation—by virtue of its right as successor of the Holy See, and judicial decisions of courts and visitors. Similar proceedings happened in other countries. Thus by the ordinance of Blois (1579) Paris was forbidden to give lectures or degrees in civil law. Early legislation dealt more with discipline and property than

(*l*) For canon law in England, see Stubbs, Lectures on Medieval and Modern History; Maitland, Canon Law in England. It is called *jus pontificium* in the injunctions.

(*m*) Immortalised in the line—

Lingua, tropus, ratio, numerus, tonus, angulus, astra.

Each corresponds to its peculiar heaven, Dante, *Convivio*, ii. 14. Skelton says of Wolsey ("Why come ye not to Court?"):—

He was but a poor master of art:
God wot had little part
Of the quadrivials,
Nor yet of trivials,
Nor of philosophy.

with education. Under the head of discipline the most important branch was the maintenance of orthodoxy, both religious and political (*n*). Oxford was at one time tainted with the suspicion of heresy. It was specially named in the Assize of Clarendon (1166) (*o*), and it refused to condemn the doctrine of Wyclif (*p*). But circumstances were too strong for it. The Holy See, of course, worked in the direction of the preservation of orthodoxy. The Council of Vienne (1312) decreed that teachers of Hebrew, Arabic, and Chaldee at Paris, Oxford, Bologna, Salamanca, and the University of the Roman Curia, must be Catholics (*q*). The case of teachers of other branches of learning was no doubt an *a fortiori* one. Who were the proper authorities for the maintenance of orthodoxy was for a long time a disputed question at Oxford, but not as much at Cambridge. The mendicant orders, chiefly the Franciscans, made vigorous attempts to escape graduation in arts, and to bring the theological instruction of the university into their own hands. The great contest was in 1314, the result being the

(*n*) An example is a decree of Convocation at Oxford in 1683 by which the works of Buchanan, Milton, and others were publicly burned.

(*o*) *Prohibet etiam dominus Rex quod nullus in tota Anglia recepiat in terra sua vel soca sua vel domo sub se aliquem de secta illorum renegatorum qui excommunicati et signati fuerint apud Oxeneforde.* But possibly this may be the city, not the *studium*. In Atterbury's answer to Wake (1700), the Bishop in his preface says that a university is "a place that has not been thought apt to instil into its members a disesteem of their Holy Mother."

(*p*) 2 Rashdall, 428.

(*q*) Adopted into the Clementine Constitutions, v, 1.

submission of the friars (*r*). Whatever their shortcomings may have been, the schools of the friars at Oxford—they had no colleges—at least produced Roger Bacon, Duns Scotus, and William of Ockham (*s*).

After the Reformation, to be a member of "the Church of England as by law established" (*t*), was a necessary condition precedent for holding most university or college offices or for proceeding to a degree. In 1581 the Chancellor of Oxford, the Earl of Leicester, directed that no scholar should be admitted to any college or hall before subscription to the xxxix articles. If the age were under sixteen, only subscription was necessary; at sixteen or over, the oaths of allegiance and supremacy. At Cambridge subscription was necessary only for degrees. The oath of supremacy must also have been taken before admission to a degree (1 Eliz., c. 1, s. 25). By the Canons of 1603, No. xxiii, all members of a college and the college servants were to receive

(*r*) The pleadings in the legal proceedings before Cardinal Richard de S. Eustachio are set out at great length by Dr. Rashdall in Oxford Hist. Soc., Collectanea, ii, 193 (1890). The Pope allowed the case to be tried at Oxford rather than Rome owing to the allegation of its poverty by the university.

(*s*) See Thomas Eccleston (*circ.* 1250), *De Adventu Fratrum Minorum in Anglia* in Brewer's Monumenta Franciscana (1858), translated by F. Cuthbert, (1903); W. G. D. Fletcher, The Black Friars at Oxford (1882); A. G. Little, The Grey Friars in Oxford (1892); The Educational Organisation of the Mendicant Friars in England (Transactions of the R. Hist. Soc., 1894); Cambridge Hist. of Eng. Lit., vol. i, The Scholars of Paris and the Franciscans of Oxford, by Dr. Sandys (1907). In *Barnes* v. *Stewart* [1884], 1 Y. and C., 119, the Court of Exchequer in Equity held that the works of Matthew Paris are not evidence of the date of the establishment of the Franciscan order.

(*t*) The statutory phrase.

the communion four times a year. The Act of Uniformity, 1662, carried out the same principle, and the obligation imposed by it as to the universities was not affected by the Toleration Act, 1689, and the Roman Catholic Relief Act, 1829. Before admission of a head or fellow further preliminaries were required. In addition to those already named, he must have taken the oath of abjuration of papal authority, and must have made the declarations of conformity and against transubstantiation, invocation of saints, and the sacrifice of the mass, and must have received the Sacrament. A corporation keeping or maintaining a schoolmaster who did not repair to church was liable to a fine of £10 a month during his default (23 Eliz., c. 1). The conditions, other than subscription, were rendered unnecessary by subsequent legislation, especially by an Act of 1867 (30 & 31 Vict., c. 62) (*u*). From 1832 the degrees of B.A., B.C.L., and B.M., might have been taken without subscription. Before that date Oxford excluded nonconformists from these degrees by rules of the university, Cambridge by rules of the colleges. The law as it stood up to 1871 is thus given in the Oxford University Calendar of that year:—"Before admission to the degree of Master of Arts, Bachelor of Divinity, or Doctor of any of the three superior faculties, every person is required to make and subscribe a declaration of assent to the Thirty-nine

(*u*) Whether this Act enables the Convocations of Oxford and Cambridge to elect as Chancellors persons not members of the Church of England is perhaps still an open question.

Articles and to the Book of Common Prayer, taken from the 36th Canon, and to promise that he will observe the statutes, privileges, customs, and liberties of the university, and will act faithfully, creditably, and honestly in the two houses of Congregation and Convocation, especially in all that concerns graces for degrees, and in elections." The promise to observe the statutes, etc., is still enforced, but the Universities Tests Act, 1871 (34 & 35 Vict., c. 26) (*x*), abolished subscription to the articles, all declarations and oaths touching religious belief, and all compulsory attendance at public worship in the universities of Oxford, Cambridge and Durham (*y*). There is an exception confining to persons in holy orders of the Church of England degrees in divinity and positions restricted to persons in holy orders, as the divinity and Hebrew professorships. Colleges founded after the Act are not within it (*z*). The newer universities adopt its principle without the exception (*a*). The Universities Act of 1877 enacts

(*x*) The history of the Act will be found in A. V. Dicey, Law and Public Opinion in England (1905). The moral aspect of subscription is the subject of Essay iv in Aids to Faith (1861). For the law before the Act see J. Heywood, Recommendations of the Oxford University Commissioners and a History of the University Subscription Tests (1858).

(*y*) See *Green* v. *Peterhouse*, below.

(*z*) See *R.* v. *Hertford College*, below.

(*a*) An example is s. x of the charter of the Victoria University of Manchester: "Provided that it shall not be lawful for the Court by any statute or otherwise to impose on any person any test whatever of any religious belief or profession in order to entitle him or her to be admitted as a professor teacher student or member of the university or to hold office therein or to graduate therein or to enjoy or exercise any privilege therein."

that nothing in the Act shall be construed to repeal any provision in the Act of 1871, with a saving clause in favour of the erection or endowment of an office (other than a headship or fellowship), requiring the possession of theological learning, and of religious instruction and morning and evening prayer in colleges.

The Crown influenced the universities by—besides charters—positive direction, dispensation from and suspension of existing law, and visitation directly or by delegation. The interference really supplied the place of commissions of modern times (*b*). In 1231 and 1318 the King acted through the Sheriff of Oxfordshire, in the latter case to carry out the compromise of 1314, already noticed. Edward III in 1375 issued a mandate in favour of graduates in law. Richard II in 1395 called on the Chancellor of Oxford to root out Lollardism and to report on Wycliff. Instances better known are the injunctions of Thomas Cromwell to Oxford and Cambridge in 1535 and the visitations of 1549 and 1559. Instances of interference in the case of individuals were not uncommon under the Tudor and Stuart Kings, and even earlier. Thus in 1358 Guido di Limosano, Secretary of the King of Sicily,

(*b*) The power of the Crown to issue a commission to inquire was much discussed after the issue of the commission of 1850. Sir R. Bethell and other counsel advised against it in 1851; the Attorney- and Solicitor-General and the Advocate-General were in favour of the power. Leave to be heard before the Crown in Council by the objectors was refused by Order in Council. Oxford Report, 22—26. The Scottish University Commissioners who reported in 1831 were appointed to visit, not to inquire.

was admitted to incept by the King's letters (*c*). In 1377 a mandamus went to the Chancellor of Oxford to banish Lollard scholars (*d*). Henry IV granted permission to graduates to sue for papal provisions contrary to the Statutes of Provisors until this was forbidden by 9 Hen. IV, c. 8. In 1577 the Chancellor, acting for the Queen, forced John Underhill as Rector upon Lincoln College (*e*), he having been previously expelled from a fellowship at New College by the same authority. James I in 1618 ordered Wadham to elect his nominee Warden (*f*). In 1661 P. Simon was elected President of Queens'. The election was set aside by a royal mandate nominating A. Sparrow. On a mandamus to restore Simon, the King's Bench was equally divided, consequently following the maxim *Semper praesumitur pro negante* the nominee of the Crown retained the position. James II forced his candidate on Magdalen; and immediately afterwards William III sent a mandamus to King's to the same effect (*g*). These attempts and others were not always successful. Sometimes degrees were conferred on the recommendation of the King or the Chancellor, as M.B. on Sydenham, the great physician, and D.D. on Thomas Fuller in 1660. Suspension of and dispensation from college statutes was asserted as part of the

(*c*) Little, 48.
(*d*) Cited Sir T. Raym. 110.
(*e*) A. Clark, Hist. of Lincoln College, 49.
(*f*) J. Wells, Hist. of Wadham College, 41.
(*g*) J. R. Bloxam, Magdalen College and James II, 272. See Appendix.

prerogative before the Bill of Rights (probably in imitation of papal bulls of exemption), and the right appears still to continue. For the provisions of the Bill of Rights as to dispensation and suspension apply only to statutes of the realm, and the Crown, as creator of a corporation, necessarily has authority to suspend and dispense from the operation of the statutes and by-laws of its creature. The statutes of Emmanuel were suspended by Charles I (*h*). Both Henry More and Cudworth, the Cambridge Platonists, were in 1675 and 1679 respectively dispensed from residence at Christ's. A royal dispensation to a fellow of St. Catharine's to hold with his fellowship a living of the value of ten marks in the King's books is mentioned in the argument of a case in 1791 (*i*). In the case of Queens' a dispensation was presumed after the lapse of two hundred and fifty years (*k*). In the case of the same college the President was allowed to hold his office by dispensation, although a layman, and therefore disqualified by the statutes. It was granted by the Crown through the Lord Chancellor (Lord Brougham) (*l*). The best-known case is one which occurred in 1815, though it is not a university case. But the principle is the same. The statutes of Eton College provided

(*h*) 2 Mullinger, 316.

(*i*) *R.* v. *St. Catharine's College*, 4 T. R. 233.

(*k*) *Re Queens' College*, [1821] Jac. 1. But notice that the college was a royal foundation. The dispensation was for electing two Middlesex or City of London fellows, the statutes providing for only one.

(*l*) Grant, 580 (*n*).

that no fellow should hold any spiritual preferment. Queen Elizabeth permitted a fellow to hold such preferment up to a certain value without forfeiting his fellowship, with a *non obstante* proviso. The fellows were allowed by the visitor (the Bishop of Lincoln) and assessors to take the benefit of the dispensation, on the ground that the Bill of Rights could not be construed to affect the exercise of a dispensing power which had been assumed a century before that enactment had become law (*m*). The power of dispensation was sometimes exercised, or attempted to be exercised, by the college itself. In one case the Warden, three bursars, five deans, and five senior fellows had power to dispense with the absence of a fellow. It was held that this dispensation was not exercisable by a majority. The act was not a corporate act, and 33 Hen. VIII, c. 37, only applies to corporate acts (*n*). By many of the old statutes an oath against obtaining dispensation was a necessary condition for admission as fellow. Dispensation has been—and in some cases still might be—granted by visitors, *e.g.*, against vacation of fellowship by failure to take a particular degree in a given time (*o*). Sometimes it was granted by Convocation, especially as against the residence for degrees necessary under the Laudian statutes, or for smaller matters, such as

(*m*) P. Williams, *Report of the Proceedings against the Provost of Eton College* (1816).

(*n*) *New College Case* [1568], Dyer, 247a. An oath contrary to the Act of Henry VIII is void by s. 4 of the Act.

(*o*) See the case of Mark Pattison in 1852; Clark, Hist. of Lincoln College, 192.

university masses and funerals (*p*). In one case of a grant by the Crown the right has been revested. A grant of James I, confirmed by 10 Anne, c. 45, annexed the rectory of Newelme or Ewelme to the Regius Professorship of Divinity at Oxford. It was revested in the Crown by the Rectory of Ewelme Act, 1871, and any member of Oxford Convocation may be appointed. The action of Mr. Gladstone in advising the Crown as to the first appointment was a matter of great political interest at the time.

(*p*) Examples will be found in W. G. Searle, Grace Book (Cambridge), for the years 1501-1542 (1908).

CHAPTER II

VISITATION

(*a*) *The Universities*

THE Bishops of Lincoln appear to have visited the University of Oxford on several occasions before Oxford was made an independent see by Henry VIII. The Bishops of Ely claimed the same powers for Cambridge. It was only by slow degrees that this claim and appeal from the Chancellors' courts were abandoned. Later the Archbishops of Canterbury claimed visitation to the exclusion of the bishops (*a*). This seems to have been first asserted by Archbishop Peckham in 1281. The right of the Archbishop to visit, except for heresy, was resisted by the universities. Richard II decided in favour of the right by letters patent in 1397, and it was indirectly confirmed by Parliament in 1407 (9 Hen. IV, c. 1), and 1411 (13 Hen. IV, c. 1). The visitation of Queen's by the Archbishop of York was saved, if sufficiently proved (*b*). Thomas Cromwell and Layton visited both universities and so did

(*a*) For the history, see Report of Oxford Commission, Evidence, 245; 2 Rashdall, 425, 488.

(*b*) The right was proved in favour of the Archbishop in 1412, and his successors still remain visitors of the college.

Cardinal Pole *jure legatino*, and finally Charles I himself decided in Council in 1636 that Archbishop Laud could visit *metropolitice* on emergent cause to be made known to the King (*c*). The papal rights of visitation (if any) were transferred to the Crown by 25 Hen. VIII, c. 21 (enabling the Crown to visit colleges and other corporations by commission) (*d*), and by the Act of Supremacy, 1 Eliz., c. 1. By 31 Hen. VIII, c. 14, colleges exempt from the visitation of the ordinary were visitable by the ordinary in whose diocese they were, or by such person or persons as the King might appoint. The Chantry Act of 1547 empowered the commission of 1549 to be issued. It also provided for the founding of grammar schools, for "the further augmenting of the universities," and for altering the nature and condition of obits "to a better use" (*e*). In 1647 an ordinance passed for the visitation and reformation of the University of Oxford, Selden being one of the commissioners (*f*). Charles II appointed visitors in 1660. Cambridge was visited by Cromwell and Pole and especially by commissioners appointed by Queen Elizabeth in 1570, whose statutes are the analogue of the Laudian statutes at Oxford. James II visited

(*c*) The authorities will be found in Griffiths, 7 (*n.*).

(*d*) This Act specially provides that the Archbishop should have no authority by the Act to "visit or vex" any college.

(*e*) The better use has generally taken the form of dining allowances to the fellows.

(*f*) See M. Burrows, Register of the Visitors of the University of Oxford, 1647—1658 (1881). Prynne in one of his numerous pamphlets uses the strange graces of his style in favour of the visitatorial rights of the Commonwealth.

by commissioners, the official title of whom was "His Majesty's Commissioners for Ecclesiastical Causes and the Visitation of the Universities, and of every Collegiate and Cathedral Churches, Colleges, Grammar Schools, Hospitals, and other the like Incorporations, or Foundations, or Societies." This appears to be the latest example of visitation by the Crown. In the case of modern commissions they have been no doubt in the first instance royal commissions, but any action called for by the commissions has been taken by Parliament. Frequent objections to the expense of visitations appear in the early records. The rights of visitation as claimed up to the seventeenth century would probably not be admitted now. The universities are civil corporations, the colleges lay (*g*) eleemosynary corporations, *i.e.*, charities, of either royal or private foundation. As the law stands at present, a civil corporation has the Crown for visitor, the visitation being exercised by the King's Bench Division, not by the Lord Chancellor, as in eleemosynary corporations. But some civil corporations, as municipal and trading, have no visitors. In universities founded by modern charter the Crown is appointed visitor, and acts

(*g*) Even though the head be required to be in holy orders. The purpose of the founder is the test of whether it be lay or spiritual, *A.-G.* v. *St. Cross Hospital* [1858], 17 Beav., 435. See, too, *Whittre's Case* [1628], Godb. 394. The Dean and Chapter of Christ Church form a spiritual corporation, *Fisher* v. *Dean of Christ Church* [1725], Bunb. 209. In *Pits* v. *James* [1615], Hob. 128, Hobart, C.J., said that the Stat. 1 & 2 P. & M., c. 8, as to devises to spiritual corporations, extended to Trinity, Cambridge, because it was principally intended for the study of divinity.

through the Lord President of the Council. There is a doubt whether Oxford and Cambridge have visitors. The university calendars name none. The report of the Oxford Commission (1852) sets forth opinions of Lord Campbell and others that in 1836 they considered the Crown visitor of Oxford (*h*). The Order in Council in *Bentley's Case* in 1718 makes the Crown visitor of both universities (*i*). The matter must be considered doubtful, and in modern times the recommendations of commissions are only of binding force where they have been clothed with the sanction of the legislature. The question of the existence of a visitor is important from the point of view of procedure. In one of the *Bentley Cases*, in 1723, a mandamus issued to the Vice-Chancellor of Cambridge, because the university made no return of a visitor (*k*).

The Crown cannot deprive the universities any more than other corporations of any right attaching by charter or prescription, or grant new charters or impose fresh statutes without their voluntary acceptance. But much of the difference between medieval and modern organisation is of home growth, independent of visitations, and with little interference by Crown or Parliament. It was in this way that the divisions into nations became obsolete at Oxford and Cambridge (*l*). At one time it seems to have

(*h*) App. D., 54.
(*i*) App. C., 40.
(*k*) *R.* v. *Cambridge University*, 2 Strange, 1157.
(*l*) The reason for nations was no doubt the universality of the

been almost a condition of the existence of a university. At Bologna the *Universitas Citramontanorum* and *Universitas Ultramontanorum* were each divided into nations, making sixteen in all. Paris had the French, Picard, Norman, and English. Scotland still has them. Oxford and Cambridge were divided into North (*Borcales*) and South (*Australes*). Scotsmen ranked as Northerners, Welshmen and Irishmen as Southerners. Continual struggles between the nations led to severe penalties being denounced against breaches of the peace and to the incorporation into the oath taken by the M.A. on his inception that he would not foster disturbances between the nations. The division into nations is now represented by a faint survival in the two proctors, originally representatives of north and south. Jealousy between the nations led to frequent dissensions in the election to fellowships, for what was north and what was south was not always easy to determine, Worcestershire especially being debateable ground. The jealousy of the universities felt by the citizens culminated in the famous outbreak of St. Scholastica's Day, 10 Feb. 135$\frac{3}{4}$, and the preponderance of the universities has only recently been diminished by legislation (*m*). It was only in 1825 that the last

university system. It was a *studium generale*, and birds of a feather would flock together.

(*m*) 2 Rashdall, 408; Acts of the Privy Council, 1571—1575 (for the history of the fine levied on the City); W. H. Turner, Records of the City of Oxford (1880); Prof. Thorold Rogers, Oxford City Documents (1891).

relics of the penance of the City of Oxford disappeared (*n*). Many clauses in favour of the town will be found in the Cambridge Award Act, 1856 (19 & 20 Vict., c. xvii). A recent Oxford Act is 22 & 23 Vict., c. 19, relieving the mayor or any other municipal officer of Oxford from taking the oath up to that time required under a charter of 1248 for the conservation of the liberties of the university.

Oxford and Cambridge only have been dealt with, as visitation of the modern universities is of no historic interest. The supposed classical university at Cricklade (Greeklade), and the medical one at Lechlade (Leechlade), are purely mythical. Ipswich, Stamford, and Cromwell's Durham left no traces.

(*b*) *The Colleges*

Visitation of colleges rests on common law as far as it is not affected by statutes of the realm (*o*) or of colleges (*p*). At common law "all eleemosynary corporations who are to receive the charity of the founder have visitors, if they are ecclesiastical corporations; and if a particular visitor is not provided by the founder, then the ordinary of the place is

(*n*) Cambridge had its St. Scholastica massacre in 1381, at the time of the peasant rising, when many of the charters were burned. Paris affords the usual parallel. There was a great riot in 1200, and the municipality was severely punished.

(*o*) *E.g.*, 20 and 21 Vict., c. 25, as to Queen's.

(*p*) As at Worcester, where the old composite visitor (the Bishops of Oxford and Worcester and the Vice-Chancellor) was replaced by the Lord Chancellor.

visitor: if they are lay corporations, the founder and his heirs are perpetual visitors" (*q*). The right of visitation is in law an incorporeal hereditament. The visitatorial power is a necessary incident of an eleemosynary corporation (*r*), which a college is (*s*). "It is," says Mr. Justice Story, "a power to correct abuses and to enforce due observance of the statutes of the charity, but not a power to revoke the gifts, to change uses, or to divest rights" (*t*). The courts do not take judicial notice that a college has a visitor, the fact must be proved. The chief duties of the visitor of a college at present are confirmation of the head, interpretation of the statutes, and to act as a court of appeal on application by a member, or one claiming to be a member, of the foundation. (*u*) His power of expulsion or deprivation, though still competent, has been little exercised in modern times. His power of appointment of a head on lapse frequently found in old statutes, seldom or never exists now.

(*q*) *R.* v. *Blythe* [1699], 5 Mod. 404. In canon law the *visitator* was always an ecclesiastical person. The nearest approach to the modern law will be found in Decretals, iii, 35, 8.

(*r*) *Appleford's Case* [1672], 1 Mod. 82, where a mandamus to restore a fellow of New College, who had been deprived by the visitor, was refused.

(*s*) "Fellows of colleges in the universities are in one sense the recipients of alms, because they receive funds which originally were of an eleemosynary character," Lord Coleridge, C.J., in *Harrison* v. *Carter*, [1876] 2 C. P. D., 86.

(*t*) *Allen* v. *McKean* [1833], 2 Sumner (U.S.) 276.

(*u*) He may even confirm the election of the candidate with the minority of votes, as where the Earl of Pembroke confirmed the election of Dr. Wynne, at Jesus, Oxford, in 1712. This proceeding was perhaps suggested by the *postulatio* of Canon Law, Decretals, i, 6.

Though colleges are charities, they are exempt from the control of the Charity Commission. The fact that bishops are so often visitors is perhaps due partly to the convenience of creating a higher sanction by adding ecclesiastical to visitatorial authority, partly to the original position of some of the older colleges as quasi-ecclesiastical corporations. At present they are lay corporations though every member be in holy orders (*x*). The only college which is to any extent an ecclesiastical corporation is Christ Church (*y*), where the dean and chapter share the government with the students (*z*). Possibly the Crown is visitor of Christ Church as supreme ordinary of the realm, as well as by virtue of being founder. In case of disability by infancy, lunacy (*a*), or otherwise of the visitor, or heir of the visitor appointed by the founder, or where the founder has appointed no visitor, or has only appointed a visitor to part of the foundation, or there is a failure of heirs of the founder (*b*), or

(*x*) *Welch* v. *Hall* [1675], 3 Keble, 543.

(*y*) *Fisher* v. *Dean of Christ Church*, above. For prescription for discharge from tithe, a college may claim as a spiritual corporation where it is alienee of abbey lands, *Bowles* v. *Atkins* [1666], 2 Keble, 28.

(*z*) The anomalous position of Christ Church has led to the frequent assertion in Acts of Parliament (*e.g.*, 21 & 22 Vict., c. 44, s. 31), that Christ Church is for the purposes of the particular Act to be deemed a college. In some Acts (*e.g.*, 21 & 22 Vict., c. 94), it is provided that for the purposes of the Act the words "ecclesiastical corporation" are not to include Christ Church. This evidently shows that without such express exception it might be considered to be such a corporation.

(*a*) *A.-G.* v. *Dixie* [1807], 13 Ves. 519.

(*b*) As in the case of St. Catharine's, Cambridge, after the failure of heirs of Wodelarke, the founder, *R.* v. *St. Catharine's College* [1791],

the Crown is founder, the right of visitation is in the Crown, and is exercised by delegation through the Lord Chancellor (*c*). The Crown may confer the visitation as a franchise on a subject. It is a disputed point whether the Crown can confer inheritance of a visitation, but the better opinion is that it can. When the visitor has been elected head, and so visitor and visited combine in the same person (*d*), the King's Bench visits during the temporary combination. The mode of bringing a case before the Lord Chancellor is by petition, not by information (*e*). By s. 17 of the Judicature Act, 1873, it was enacted that there should not be transferred to the High Court of Justice any jurisdiction exercised by the Lord Chancellor in right of or on behalf of His Majesty as visitor of any college. It should be noticed that no technical words are necessary for the creation of a visitor. In the case of Clare the appointment of the Chancellor as visitor was gathered by the Court from the interpretation of the statutes (*f*).

4 T. R. 283. The same thing happened at Trinity Hall, *Ex parte Wrangham*, below.

(*c*) Where the visitor is visitor of a part, the Crown only visits the residue. But new foundations generally fall under the old visitor. (*Jennings' Case* [1699], 5 Mod. 422.) In the case of a hospital the law is different. In the event of similar incapacities and defaults the ordinary visits, 2 Inst., 725.

(*d*) This happened in the case of the College of Manchester, *R.* v. *Bishop of Chester* [1727], 2 Str. 727. It is only poetically and not legally true that a man may be himself the judge and counsel and himself the prisoner at the bar.

(*e*) *R.* v. *St. Catharine's College.*

(*f*) Even if no visitatorial authority be expressly given by the founder, the visitor has it as incident to his office. *R.* v. *Warden of All Souls* [1682], T. Jones, 175; *Ex parte Wrangham* [1795], 2 Ves.

Decisions of visitors seldom occur in the ordinary law reports. Many of them turned on tenure of fellowships and on the meaning to be given to "founder's kin," of which the most important example is *Spencer* v. *All Souls College* (see below). Another All Souls case was *Watson* v. *All Souls College* (*g*). One of great interest is *Ex parte Moorsom*, Appendix. The latest reported case seems to be one in 1866, where the Lord Chancellor, sitting as visitor, sanctioned the appropriation of part of the revenue of Christ Church in aid of the stipend of the Regius Professor of Greek (*h*). In the histories of the various colleges there are continual allusions to appeals to the visitors, and there also exist pamphlets on certain cases which excited interest at the time (*i*).

A glance at the names of the visitors as they

Jun. 609, was before the Lord Chancellor as visitor of Trinity Hall; and *Davisons' Case* [1772], Cowp. 319, before him as visitor of university, as delegate of the Crown.

(*g*) [1864], 11 L. T. Rep. 166. The report of the Commission, 329, mentions a decision of Archbishop Cornwallis in 1777. Founder's kin may still be of occasional importance, as at St. John's, Oxford, and Hertford. Jesus, Oxford, and several others still have close fellowships and scholarships. Even the university may have founder's kin scholarships, as the Squire scholarships at Oxford and Cambridge, founded quite recently. The name of the Justinian Bracebridge Exhibitions for founder's kin at Oxford is not likely to be forgotten, with its humorous combination of the law and the stage.

(*h*) L. R., 1 Ch. 526.

(*i*) See, for instance, the Proceedings of Corpus Christi College in the case of Francis Ayscough vindicated (1730). He was a probationer fellow whom the college refused to elect actual fellow. The visitor reversed the decision of the college. The proceedings are described in T. Fowler, History of Corpus Christi College, 478. In the same college lately one of the votes for the election of a President was that of an ex-fellow who had not been re-elected at the proper date. The visitor held that the vote was good, the re-election being retrospective.

appear in the university calendars gives some interesting results. The Crown is the most frequent visitor, not only of royal foundations but of others, such as University and St. Catharine's, where the Crown has assumed the office by lapse of founders' heirs or otherwise (*k*). In the case of St. Catharine's Robert Wodelarke, the founder, appointed himself the first master. He was also at the same time Provost of King's, a duplication of offices which seems unique. The Bishop of Winchester is visitor of five colleges at Oxford, the Bishop of Ely of four at Cambridge, originally no doubt as ordinaries. The only college which has for visitor the descendant of the founder is Sidney, of which Lord de L'Isle and Dudley is visitor. Jesus, Oxford, has the Earls of Pembroke for hereditary visitors (*l*). Balliol has the unique privilege of electing its own visitor. Of Magdalene the possessor of Audley End for the time being is visitor and appoints the head (*m*). Up to 1857 Queen's had one visitor for general purposes and another for the Michel foundation (*n*).

(*k*) It is also visitor of Corpus, Cambridge, in extraordinary cases, but the interpretative authority under the new statutes is a board consisting of the Vice-Chancellor and two Regius Professors.

(*l*) The third Earl of Pembroke was not the founder, but was Chancellor at the time of the foundation.

(*m*) This right is preserved by the Act of 1877 until ceded by deed under seal by the possessor of Audley End.

(*n*) By 20 & 21 Vict., c. 25, the Archbishop of York became visitor for the whole foundation. In Bentley's time Trinity, Cambridge, had both a general and a special visitor. Whether a visitor be general or special is determinable by the Chancery Division on information, *A.-G. v. Brown's Hospital* [1849], 19 L. J. Eq. 78.

In some colleges, such as Clare (*o*), Christ's, Emmanuel, and formerly Worcester, the office is composite or in commission, the number being usually three. In such a case a majority would probably be sufficient for decision, on the analogy of the majority of the members of a corporation under 33 Hen. VIII, c. 27 (*p*). The same Act was interpreted to give the head of a college in an election a negative but not a casting vote, unless the statutes provide otherwise (*q*). The question who is visitor is in a disputed case to be tried by a jury, not in the Chancellor's Court, and not by the High Court merely on affidavit. In the case of University, the King's Bench in 1726 on a disputed election to the Mastership, declared it to be a royal foundation and its visitor to be the Crown (*r*). This decision was recited in the college statutes of 1736, probably a solitary instance of the incorporation of a decision in statutes. The question whether the Archbishop of Canterbury or of York was visitor of Queen's (Quenhalle) was settled by Parliament in 1412 (*s*).

(*o*) The visitor is remarkable, the Chancellor and two persons appointed by grace of the Senate.

(*p*) The canonical majority before the Act was two-thirds (*A.-G.* v. *Davy* [1741], 2 Atk. 212). In some cases, provision as to a majority is made by charter or statute.

(*q*) *R.* v. *Blythe* [1699], 5 Mod. 404. As a consequence he is bound, although he be in the minority, to affix the corporate seal to a lease (*R.* v. *Windham* [1796], Cowp. 377), or the presentation to an advowson (*R.* v. *Kendall* [1841], 1 Q. B. 366). Whether his concurrence is necessary for the election of a fellow depends on the statutes. It was held that it was at Queens', that it was not at Clare and Caius. (*Re Queens' College* [1828], 5 Russ. 64.)

(*r*) Previously the university had been visitor.

(*s*) Griffiths, 8.

The importance of the visitor is still considerable, and has been little affected by recent legislation. In most cases of action taken by a college with regard to any of its members on the foundation or claiming to be on the foundation (*t*), an appeal to the visitor is a condition precedent to proceedings at law or in equity. Even after appeal, since the visitor is in a judicial position (*u*), the courts will not interfere unless on proof of his declining jurisdiction, or on some ground which avoids his decision altogether, such as assuming jurisdiction, breach of trust, dealing with a trust estate (*x*), or acting from interested or corrupt motives (*y*), or in breach of elementary principles of justice, such as deciding on an *ex parte* statement. In such cases, mandamus or prohibition will be according to circumstances, and apparently an action if he act without jurisdiction. In one of the *Bentley cases*, in 1723, Mr. Justice Fortescue relied on an extremely early precedent in support of the view of *audi alteram partem* as part of the visitor's duty. "God himself," said the learned judge, "did not pass sentence on Adam before the latter was called upon for his defence. 'Adam,' says God, 'where art thou? Hast thou eaten of

(*t*) This is put in to cover the decision in *R.* v. *Hertford College* (below).

(*u*) His jurisdiction is a *forum domesticum*, but still a *forum*.

(*x*) *Green* v. *Rutherforth* [1750], the case of a devise of a rectory to St. John's, Cambridge, in trust for the senior fellow.

(*y*) See *Whiston* v. *Dean of Rochester* [1849], 7 Hare, 532, *R.* v. *Dean of Rochester* [1851], 17 Q. B. 1. The alleged interest of the visitor (the Bishop) was that he had connived at misappropriation of cathedral revenues by the Dean and Chapter.

the tree whereof I commanded that thou shouldest not eat?' And the same question was put to Eve also" (*z*). An example of the working of the remedy by mandamus is the issue of the writ to the visitor of Peterhouse in 1788, enjoining him to proceed to the election of a master owing to the failure of the fellows to elect (*a*). A mandamus does not lie to a visitor to reverse his own decision (*b*), or to a college to restore a fellow after deprivation by the visitor (*c*) or his commissary (*d*). In the absence of any of the grounds above mentioned, the decision of the visitor is conclusive and is a judgment *in rem*, whether as to a question of law or a question of fact (*e*). He is not bound to wait for an application, but may act *mero motu* in a proper case. He cannot be judge in his own cause unless such power be specially given him (*f*). In deciding an appeal he may properly take into consideration long and undisturbed possession of an office (*g*). An example

(*z*) *R.* v. *Chancellor of Cambridge*, 1 Str. 566. The principle is illustrated by numerous other decisions. A good modern instance is *Wood* v. *Wood* [1874], L. R., 9 Ex. 190.

(*a*) *R.* v. *Bishop of Ely*, 2 T. R. 290.

(*b*) *A.-G.* v. *Stephens* [1737], 1 Atk. 358.

(*c*) *Parkinson's Case* [1689], Carth. 92, a Lincoln College case, the Court holding that a fellow holds his fellowship on the implied condition of submission to the visitor.

(*d*) The visitor seems to have a general right of visiting by commission. In some colleges this was expressly provided by the founder.

(*e*) As a matter of practice in modern times the visitor usually acts on legal advice if the question be at all an important one.

(*f*) *R.* v. *Bishop of Ely*, above, where held that statutory power to nominate a head on lapse does not constitute him a judge in his own cause.

(*g*) *Re Downing College* [1837], 2 Myl. & Cr. 643.

of the smaller questions which he may have to decide is whether a non-resident fellow may let his rooms (*h*).

No appeal lies from the visitor unless he visits *qua* ordinary, when an appeal lies to the Crown in Chancery (*i*). In the words of Lord Camden, visitation "is a despotism uncontrolled and without appeal, the only one of the kind existing in this kingdom" (*k*). But the courts, as in the *Peterhouse Case*, will take care that he acts within any limitations contained in the statutes. Members or members elect of the college not claiming to be present or future foundationers have no right of appeal. If the college accept them, they are in the position of "mere boarders" (to use Lord Apsley's phrase), and their position is little better than that of tenants-at-will (*l*). At one time it was thought that only actual members of the foundation had the rights of appeal (*m*). But it is now settled that anyone claiming to be fellow, scholar, or otherwise on the foundation had the

(*h*) *A.-G.* v. *Stephens*, above.

(*i*) This is tantamount to saying that no appeal is now competent, for probably no visitor now acts *qua* ordinary.

(*k*) Grant, 534.

(*l*) *Ex parte Wrangham* [1795], 2 Ves. Jun. 617, as to a fellow-commoner; *Davison's Case* [1772], Cowp. 319, a petition to Lord Apsley, L.C., as visitor of University to restore an expelled commoner, on the ground that he had been expelled by a minority of the fellows; *R.* v. *Gwndon* [1775], Cowp. 315, a case of expulsion of a commoner from University. This is but an example of the rule that a visitor's power exists only between member and member, and between member and stranger.

(*m*) The authority generally cited was *R.* v. *St. John's College, Oxford* [1698], Holt, 487.

right (*n*). A sentence of expulsion by the college, from which no appeal has been made, is conclusive, and is in the nature of a judgment *in rem* determining the status of the person affected (*o*). It is a question whether a visitor can examine witnesses on oath (*p*). He cannot, apart from statute, compel the attendance of witnesses. No precise mode of procedure is necessary, as long as substantial justice is done and opportunity given, generally by citation, to all parties interested to be heard (*q*). He cannot force a college to use the common seal. He has a right to use the college hall or chapel, and exclusion by the college does not render the visitation ineffectual (*r*). He may adjourn his quasi-court from time to time (*s*), and may award costs between parties (*t*), and charge his own on the college, such costs being liable to taxation (*u*).

It is doubtful whether a power to interpret statutes, when conferred on a particular person, constitutes him visitor. Probably not, as the provision in the Act of 1877, that the Chancellor of

(*n*) *R.* v. *Hertford College* [1878], 8 Q. B. D. 693. In this case Lord Coleridge points out, at p. 703, that the *St. John's Case* is no authority at all, for there a definite private right of property in the Mayor of Bristol had been interfered with by the college.

(*o*) *It.* v. *Grundon.*

(*p*) It was done in *Phillips* v. *Bury*, below, p. 122.

(*q*) *Summarie simpliciter et de plano sine strepitu aut figura judicii*, Com. Dig. Visitor, B.

(*r*) *Phillips* v. *Bury*, below.

(*s*) *Re Dean of York* [1841], 2 Q. B. 89.

(*t*) *Queens' College Case* [1820], Jac. 47. But he does not always do so. Costs were not awarded in *Ex parte Moorsom*, appendix.

(*u*) *A.-G.* v. *Dean of Christ Church* [1821], Jac. 487.

Cambridge is the interpreter of university statutes made under the Act, does not constitute him visitor of the university. In college statutes it is generally provided that he is the sole interpretative authority where any doubt arises as to the meaning of a statute (*x*). He need not necessarily give a decision on the merits: he may hold that the appeal comes too late (*y*). The visitor *qua* visitor, even when the Crown, appears to have no right to inspect the books of a university (*z*). Whether he would have a right as such to inspect the books of the college visited by him, does not seem to have been decided. A college, besides being subject to visitation, may itself be visitor of a school (*a*). The visitatorial authority of the Crown does not supersede the jurisdiction of the Chancery Division or prevent it from exercising its functions in respect of an existing trust (*b*). The same result would follow *a*

(*x*) Before the first commission, as the report states, he sometimes relieved himself of difficulty by explaining away the statute or statutes.

(*y*) *R.* v. *Bishop of Lincoln*, [1785], 2 T. R. 338n., opposition to election of Dr. Horner as Rector of Lincoln.

(*z*) *R.* v. *Purnell*, [1748], 1 W. Bl. 37.

(*a*) As Caius of the Cambridge Free School. See *Protector* v. *Crayford*, [1656], Style, 457. So may the head of a college, as the Warden of All Souls of Berkhampstead. See *Ex parte Berkhampstead Free School*, [1818], 2 V. & B. 134. A college may also be incorporated as the governors of a school. See *A.-G.* v. *Brasenose College*, [1834], 2 C. & F. 295, where it appeared that at that date the college had been incorporated after its foundation as "The Governors of Middleton School, Lancashire."

(*b*) *Dougars* v. *Rivas*, [1860], 28 Beav. 233. The case of *A.-G.* v. *Magdalen College*, [1847], 10 Beav. 402, illustrates this point. The Master of the Rolls declined to interfere, on an allegation of Magdalen

fortiori where the visitor is a subject. If a charity be founded by a subject and no visitor be appointed, and the Crown then by charter incorporate governors and authorise them to make rules, the Court will interfere and direct a scheme if the existing rules do not carry into effect the views of the founder (*c*). In the case of a college, the same result seems to follow by the submission of new statutes to the Crown in Council. In the old statutes of Exeter and some other colleges a quinquennial visitation was provided. Periodical visitations at stated intervals were recommended by the Report of the Cambridge Commission (1852); but this recommendation does not appear to have been carried out. As a rule, the visitor gives reasonable notice of an official visit, though he seems—apart from statute—in no way bound to do so (*d*). There may be titular visitors of non-corporate bodies, as of the Observatory and the Ashmolean Museum at Oxford.

College School of breach of duty by the college, as it was matter for inquiry by the visitor, there being no evidence of a trust.

(*c*) *A.-G.* v. *Dedham School* [1857], 23 Beav. 350.

(*d*) For the whole law of visitors, J. L. Dampier's statement appended to the Report of the Oxford Commission (1852), is one of the best sources. Older sources are A. J. Stephens, Statutes relating to Ecclesiastical and Eleemosynary Institutions (1845); Grant, 529; Tudor, Charitable Trusts, and various digests and abridgements, such as those of Comyn and Viner.

CHAPTER III

GOVERNMENT

The government of Oxford and Cambridge mainly depends on the three great constitutional Acts, the Oxford University Act, 1854 (17 & 18 Vict., c. 81), the Cambridge University Act, 1856 (19 & 20 Vict., c. 88), and the Universities of Oxford and Cambridge Act, 1877 (40 & 41 Vict., c. 48). Other Acts of smaller importance will be noticed in their proper places. The constitution of the universities before the reforms of 1854 and 1856 will be found in the respective reports of the commissions published in 1852. Legislation has done little to affect the position of the Chancellor and Vice-Chancellor as the official and the acting head of the university respectively. The Chancellor appears to be first named in 1230, the Vice-Chancellor (*a*) in 1450. The latter is nominated by the Chancellor at Oxford, by the Council of the Senate at Cambridge. The

(*a*) *Vice-Cancellarius* was originally the equivalent of *notarius*, Du Cange, *s.v.* Before 1450 the senior member of the Faculty of Theology was in case of absence of the Chancellor or vacancy of the office *Cancellarius natus*. In the Oxford statutes the Vice-Chancellor is also called *Commissarius Generalis* and *Locum-tenens*, and in some charters *Procancellarius*.

Chancellor has been elected by Convocation since 1368. At Cambridge votes by proxy are admitted. The Chancellor need not be a member of the university. Well-known examples of non-members were Prince Albert and the Duke of Wellington. The Act of 1854 replaced the Hebdomadal Board (established by Laud, and consisting entirely of heads of houses) by the Hebdomadal Council, but left Convocation almost unaltered. It also constituted the Congregation of the University (*b*), consisting of certain university officials and resident members of Convocation (*c*). The Hebdomadal Council (so called from its meeting once a week) is composed partly of *ex officio*, partly of elected members, the Chancellor, or in his absence the Vice-Chancellor or his deputy, being chairman. It has the initiative in university legislation. Congregation can amend, confirm, or reject the Council's *projets de loi*, Convocation only confirm or reject. The Act of 1856 substituted the Council of the Senate for the *Caput Senatus*, but did not affect the Senate. The Oxford Convocation and the Cambridge Senate are nearly synonymous, both consisting of graduates of at least the degree of M.A., whose names are on the books of the university. The Act of 1877, s. 12, provided for

(*b*) This body is to be distinguished from the Ancient House of Congregation, which now exists only for the purpose of conferring degrees. The Cambridge Senate assembled for the purpose of business is called Congregation.

(*c*) The residence must be actual and not merely constructive, as by keeping rooms in college by a fellow who was incumbent of a country living (*R.* v. *Vice-Chancellor of Oxford* [1872], L. R., 7 Q. B. 471).

the making by the Commissioners named in the Act, "in the interests of education, religion, learning, and research," of statutes for the universities and colleges, and for altering and repealing statutes, with an exception in favour of trusts, conditions, and directions made more than fifty years before the passing of the Act (*d*). The object of the statutes is set forth in sects. 16—18, and affects the universities, the colleges, and the relation of the universities to the colleges. Under the authority of the Act new statutes for the universities and colleges were framed. Having been submitted to Parliament and approved by order in council, these have superseded most of the previous college statutes (*e*). Any proposed repeal or amendment of statutes made by the commissioners must be submitted to Parliament for forty days and be approved by order in council. This is by the Acts of 1854 and 1856. In the case of the universities a good deal of the old university legislation remains, especially of the Laudian statutes at Oxford. The university statutes deal with the professors and readers, the board of faculties (*f*), and the finances and accounts of the

(*d*) It may be doubtful whether the observance of "the main design of the founder" enjoined by sect. 14 has been in all cases observed.

(*e*) Except at Lincoln. See p. 12.

(*f*) Bulaeus defines *facultas* as *corpus et sodalitium plurium magistrorum certae alicui disciplinae addictorum*, 1 Hist. Univ. Paris, 251. The word *corpus* seems to imply that he regarded the faculty as a corporation, which it was at Paris and is in Scotland. Apart from this the definition meets the case of the faculty in an English university.

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universities and colleges. The Act of 1877 constitutes the Chancellor of Cambridge (but for some reason not of Oxford) the court of construction of university statutes. College statutes framed under the Act deal with the internal economy of the colleges. They have as a general rule removed all clerical restrictions from headships (*g*) and fellowships (*h*), have divided fellowships into official and prize, the latter being held for a limited period, generally seven years, and have thrown open many scholarships and exhibitions previously closed to particular schools or localities (*i*). By s. 54 of the same Act where a statute made by the commissioners for a college affects the university, it is not subject to alteration without the consent of the university. Such consent was given by the university in 1908 to an amendment of the statutes of All Souls, approved by order

(*g*) Except Christ Church and Pembroke, Oxford, and St. Catharine's, Cambridge.

(*h*) It seems from an old case, *Moseley* v. *Warburton* [1697], 1 Ld. Raym., that a fellow of a college is not a beneficed clerk, though he is bound to be in holy orders.

(*i*) Founders' kin fellowships were mostly abolished under the powers of the Acts of 1854 and 1856. In modern times questions upon them rarely arise. Probably the latest is *A.-G.* v. *Sidney College*, 1869, below. The Fereday fellowships at St. John's, Oxford, still give a preference to founder's kin. For the All Souls cases see p. 38, and for the Beverley fellowship, p. 128. Jesus, Oxford, and other colleges still have fellowships and scholarships to which persons born in a particular district or educated at particular schools have a preference. For a bequest to any undergraduate of the name of Coleman, see *Coleman* v. *Bene't College* [1678], Finch, 80. If a person goes to reside in a place temporarily, so as to give his son a preference, the qualification is good, *Etherington* v. *Wilson* [1875], 1 Ch. D. 160. For a recent example of a decision regarding close exhibitions—the Careswell exhibition at Christ Church, see *A.-G.* v. *Dean of Christ Church* [1894], 3 Ch. 524.

in council. In regard to an alteration in the St. John's statutes as to tenure of fellowships the university took no action in 1909. A fair idea of the scope of the statutes may be obtained by taking as an example those of Merton. The preamble gives a succinct history of the college. Then follow clauses dealing with the constitution of the college, the warden, fellows, postmasters (*k*), and exhibitioners, the officers of the college, administration, tuition, pensions, contributions to the university, marriage of fellows (*l*), disposition of revenue, accounts, and the visitor.

Among numerous other Acts dealing with government and constitution may be mentioned the following. The tendency of modern imperial and universal legislation has been to abolish oaths and substitute declarations, especially the declaration of fidelity by inceptors. The power depends largely on 5 & 6 Will. IV, c. 62, s. 8. Quite a formidable amount of oaths, even surpassing those demanded in the Roman system, were required in early times, and some survived down to little more than half a century ago (*m*). The oaths of allegiance, supremacy and abjuration, have been already mentioned. But there were many others, and nearly every college

(*k*) A postmaster—said to be a corruption of *portionista*—corresponds to a scholar. Magdalen calls its scholars "demies."

(*l*) Marriage is not now regarded in the same light as it was by the University of Vienna. Kink in his history of the university (1854) records an entry in the register of a graduate who *uxorem duxit versus in dementiam.*

(*m*) See the index to Anstey.

had its own special oaths. At Oxford every M.A. had to swear to refuse consent to the reconciliation of Henry Symeon (*n*) and to recognition of lecturing at Stamford, to which there had been a secession in 1333 (*o*). Both these oaths existed up to 1827. From 1423 to 1564 Oxford graduates took an oath against the doctrine of tithe promulgated by the Franciscan W. Russell (*p*). The matriculation oath was abolished at Oxford in 1854, the matriculation and degree oath at Cambridge in 1856. The oaths required at Magdalen were described in the Report of the Commission as being "of elaborate length and awful solemnity." At Lincoln there was an oath against heresy. A commonly occurring oath binding fellows not to disclose any matter relating to the college and to resist any change was made illegal by the Acts of 1854 and 1856. In the case of refusal to take the proper oaths, a mandamus lay to the head to remove the recusant, the recusant being made a party (*q*). The election of a President of Queens' was held not void because he took

(*n*) The history of this seems unknown. (Lyte, 214.)

(*o*) 2 Rashdall, 688. For a similar oath at Bologna, see 1 Rashdall, 172. Stamford disappointed the hopes of the author of the lines—

Doctrinae studium quod nunc viget ad Vada Boum
Ante finem saeculi celebrabitur ad Vada Saxi.

The main authority on the Stamford secession is R. Peck, *Academia Tertia Anglicana*, (1727).

(*p*) Little, 86. An oath was taken by every person borrowing a book from Duke Humphrey's library. In one case in 1448 the Principal of White Hall made oath that he was not a Scot, he having been falsely defamed as such (Anstey, 587).

(*q*) *R.* v. *St. John's College, Oxford* [1693], 4 Mod. 260.

the necessary oaths before subscribing the declaration under the Act of Uniformity at that time enforced (*r*). Dispensation from all or some of these oaths was frequently granted, in spite of an oath against applying for dispensation frequently occurring in college statutes. It was granted sometimes by the Crown, sometimes by Convocation, sometimes by the visitor, the last by a curious excess of authority, as one of his main duties is to see that the statutes are observed. In an interesting essay Bishop Fleetwood discusses, from the point of view of ethics, whether a fellow, swearing under statutes framed between 1440 and 1460 that he had no estate of inheritance of the value of five pounds a year, would be entitled to take into account the difference in the value of money. The bishop thinks that he would be (*s*). In one case refusal of an oath tendered was treason. This was by 28 Hen. VIII, c. 10 (repealed in Mary's reign), enforcing an oath of abjuration of the Pope.

By 13 Eliz., c. 29 (*t*), the universities then existing were incorporated under the official titles of "The Chancellor, Masters and Scholars of the University of Oxford," and the same of Cambridge, with common seals and a right to sue and be sued in their corporate names (*u*). 31 Eliz., c. 6, provided

(*r*) *Re Queens' College* [1887], Jac. 1.
(*s*) *Chronicon Pretiosum* (1745).
(*t*) Called by Sir E. Coke, "a blessed Act."
(*u*) It should be noticed that the official title is sometimes abbreviated in subsequent Acts. In 8 Jac. 1, c. 5, and 18 Anne, c. 18, it is "The Chancellor and Scholars."

for the reformation of abuses and corrupt practices in the election of fellows, and for the reading of the Act at such elections. The Act is sometimes read on these occasions; but for the most part it seems to have tacitly fallen into desuetude. By 13 & 14 Vict., c. 98, deans of cathedrals, except the dean of Christ Church, *cannot be heads of colleges.* The Oxford City Council, the Cambridge Town Council and Watch Committee, the Education Committee, and the Guardians of the Poor, are subject to special legislation under which the university is represented on those bodies. The main Acts are the Oxford Police Act, 1881, Local Government Order of 1889, the Cambridge Award Act, 1856, and the Cambridge University and Corporation Act, 1894 (*x*).

(*x*) Up to 1870 the university and city police at Oxford were independent. At present the university police force consists of a few proctors' servants, the city police being administered in the usual way under the Municipal Corporations Act, 1882. The university is represented in its management by possible nomination of university members on the watch committee.

CHAPTER IV

DISCIPLINE

The disciplinary powers of the universities extend over graduates, undergraduates, and non-members. As to graduates, by the Oxford statutes of 1882, framed under the powers of the Act of 1877, a visitatorial board has been constituted consisting of the Vice-Chancellor and six other graduates. It has disciplinary authority over professors, readers, and other university officers, and may deprive, suspend, or admonish for grave misconduct, neglect of duties, or wilful disobedience of statutes of the university. There is no similar board at Cambridge, but an analogous jurisdiction is exercised by the Chancellor, or in his absence by the Vice-Chancellor, and the *Sex Viri* (elected by the Senate) for the trial of graduates (*a*). Another remedy for offences committed by graduates is degradation or deprivation of degrees by the university itself (*b*). The principal disciplinary officers over those *in statu pupillari* are

(*a*) There is an appeal from this body to the Senate, but apparently none from the visitatorial board.

(*b*) The best-known cases are those of Bentley in 1718, and of W. G. Ward, a Fellow of Balliol, during the Tractarian controversy. In 1896 a M.B. of Caius was deprived of his degree by the *Sex Viri* after a sentence of penal servitude (*Guardian*, 21 Nov. 1896).

the two proctors (*c*) and the four pro-proctors, whose powers are based partly on 31 Hen. VIII, c. 10, partly on statutes of the universities. The whipping of old times has long ceased and so have some of the old offences, such as poaching at Shotover or Woodstock. The usual punishments now are fine, "gating," rustication, and expulsion (*d*). For graver offences the magisterial powers of the Vice-Chancellor would be invoked. By the Municipal Corporations Act, 1882, the Vice-Chancellor of Cambridge may sit as a borough justice at Cambridge. He is also president of the Court of Discipline (six heads of houses), for the trial of offences committed by those *in statu pupillari*. Regulations for the procedure of the court may, by Stat. A, c. 7, of the university statutes, be made by the court subject to the approval of the Senate. The Vice-Chancellor may also hold a court under the Cambridge University and Corporation Act, 1894. At Oxford the Chancellor and Vice-Chancellor were by the charter of 14 Hen. VIII justices for the City of Oxford and the counties of Oxford and Berks. In 1886 a new court of

(*c*) The original authority of the proctors included, among other curious matters, jurisdiction against those who paid their tailors more than the statutory allowance. They had also practically unlimited powers against those *suspectos qualitercunque*. See Wood, *Fasti Oxonienses*, 3.

(*d*) In one case it was held that a man might be expelled from the university without being expelled from his college (*R.* v. *Chancellor of Cambridge*, [1784], 6 T. R. 89). The offence was writing a pamphlet against the Established Church, and the tribunal was the Vice-Chancellor and heads of houses in the Chancellor's Court. It is difficult to suppose that this decision would be followed now, unless in the case of an unattached student.

summary jurisdiction was established by the Oxford University (Justices) Act, 1886 (49 & 50 Vict., c. 31), by which a place may be fixed within the precincts of the university where the Chancellor and his commissary (the Vice-Chancellor), and the deputy of the latter, may sit as justices for the counties of Oxford and Berks, and any justice for Oxford and Berks may sit with him (*e*). For the graver crimes the Court of the High Steward, dating from 1406, still nominally has jurisdiction to try a member of the university, graduate or undergraduate, for treason, felony, or mayhem. A true bill must be found at assizes and removed by *certiorari* to the university court, and half the jury must consist of matriculated persons. The court may now be considered obsolete. Even in Blackstone's time there had been no trial for over a century. High Stewards and Deputy High Stewards are still appointed by both universities, but the office is an absolute sinecure. In one case there is a vicarious responsibility for offences. The Act 28 Geo. III, c. 64, provided for paving and lighting Cambridge. By sect. 74 of the Act (amended by 34 Geo. III, c. 104, s. 21), if any matriculated person break or damage

(*e*) Probably a mandamus would not lie to review the decision of a disciplinary authority. It was refused to restore a fellow of New College who had been deprived as being "guilty of enormous crimes" (*Appleford's Case* [1672], 1 Mod. 82). In the case of Widdrington, a fellow of Christ's, who had been deprived as "peccant," the King's Bench refused a writ of restitution. Later he brought an action on the case against the Master, the matter was referred to certain commissioners, he was restored, and the proceedings were "buried in oblivion" (*Widdrington's Case* [1668], T. Raym., 31, 69).

one of the lamps set up under the powers of the Act, he is liable to pay for the damage; if he refuse to do so, "the tutor of the college of which the offender is a member shall be answerable for the same." Some curiosities are contained in railway Acts. By 6 & 7 Vict., c. x, proctors, pro-proctors, heads of houses, and the marshal of the university, are to have access to the Great Western railway station, and the company are not to convey as a passenger any member of the university under the degree of M.A. when the company shall be requested by an officer of the university not to convey him. No such provision occurs in the London and North Western Company's Act, but a similar clause is contained in the Acts dealing with Cambridge railway station (7 & 8 Vict., c. lxii, 9 & 10 Vict., c. clxxii). In addition to these powers of the university the colleges have their own modes of enforcing discipline, so that every undergraduate is subject to two jurisdictions. If rules of discipline be reasonable, the courts will not interfere (*f*).

Of powers of university officers in the case of non-members, the most important are those over "common prostitutes and night-walkers," over places of amusement, and over citizens. The former class of power depended at one time on charter, especially the charter of 1561 giving such jurisdiction over the town and suburbs of Cambridge and in Barnwell and Sturbridge, but has in more modern times been the subject of imperial legislation. 6 Geo. IV, c. 97, applies to both universities as to appointment of

(*f*) *Green* v. *Peterhouse*, Appendix.

constables. Under this Act the Chancellor and Vice-Chancellor may appoint constables (*g*). At Oxford, any woman of the description mentioned, found wandering and not giving a satisfactory account of herself, is to be deemed an idle and disorderly person within the Vagrant Act, 5 Geo. IV, c. 83. The Cambridge University and Corporation Act, 1894 (57 & 58 Vict., c. ix), extended to Cambridge the powers over idle and disorderly persons given by 6 Geo. IV, c. 97. The latter Act was passed in consequence of a case which occurred in 1891 (*h*). It put an end to imprisonment of women by committal by the Vice-Chancellor on unsworn evidence not given in open court. As to amusements, especially theatrical performances, there is a good deal of legislation. It is remarkable that the universities, once possessing unusual dramatic privileges, should not only have lost those privileges but have become subject to special disabilities (*i*). In the sixteenth and seventeenth

(*g*) The proctor's constables are not entitled to claim conusance in an action for trespass, *Turner* v. *Bates*, [1847], 10 Q. B. 292.

(*h*) *R.* v. *Vice-Chancellor of Cambridge*, Appendix. The power of the university to visit and enter houses of the citizens in search of suspected persons appears still to exist, but the limits of its exercise are uncertain.

(*i*) Early statutes were inconsistent. For instance, some college statutes prohibited *inhonesta spectacula*, 2 Rashdall, 617. On the other hand, a statute of Queens' went as far as to punish with expulsion any student refusing to act or absenting himself from a performance. Instances of the drama at the universities were Still's Gammer Gurton's Needle at Christ's (1575), Club Law at Clare (1599—1600), Narcissus at St. John's, Oxford (1602), Daniel's Queen's Arcadia at Christ Church (1605), and in the heat of political disturbance Cowley's Guardian, at Trinity, Cambridge (1641). These are only examples; there are numerous others, and there are frequent allusions in contemporary literature to the drama in colleges, *e.g.*, in Ben Jonson's

centuries the universities and Inns of Court were considered as privileged places not subject to dramatic censorship. Many well-known dramas were acted at Oxford and Cambridge, sometimes for the first time. The acting of plays at the universities seems to have been for the first time forbidden in 1737 by 10 Geo. II, c. 19, passed immediately before Walpole's Theatre Act, 10 Geo. II, c. 28. Both these Acts are repealed. The Theatres Act, 1843 (6 & 7 Vict., c. 68, s. 10), now provides that the licence of magistrates for a theatre within the precincts (*k*) of the universities of Oxford and Cambridge, or within fourteen miles of the city of Oxford or town of Cambridge, should not be in force without the consent of the Chancellor or Vice-Chancellor. As to Cambridge, the Act of 1843 is repealed, and the powers of the university now depend on the Cambridge Award Act, 1856, and the Cambridge University and Corporation Act, 1894 (*l*). By these Acts the proctors may enter any premises kept or used for public entertainment, or for the sale of intoxicants. The County Council may revoke any licence for the public performance of stage plays on the complaint in writing of the Vice-Chancellor or

Volpone. Even chapels were not spared; it is said that in 1564 Queen Elizabeth was present at the performance of Plautus in the chapel of King's. In Charles II's reign the performance of stage plays was limited to Epiphany (when undergraduates acted in college), and to the Encænia (when a London company acted in the yard of an inn).

(*k*) A radius of one and a half miles from Carfax at Oxford; two and a half miles from St. Mary's Church at Cambridge.

(*l*) See an article by Mr. F. H. Cripps-Day on Cambridge university jurisdiction, *Law Magazine and Review*, Aug., 1894.

the Mayor. No occasional public exhibition or performance, whether strictly theatrical or not, other than performances in theatres which are regulated by the Act of 1843, shall take place unless with the consent in writing of the Mayor. The Oxford Police Act, 1881 (44 & 45 Vict., c. xxxix), is in similar terms, the main difference being that the Vice-Chancellor has an initial veto, not merely complaint after a play has appeared. During the long and Christmas vacations the consent in writing of the Mayor is sufficient. The last kind of jurisdiction over non-members is discommoning, *i.e.*, forbidding some one, generally a tradesman, from dealing with members of a university or college. It has become almost obsolete at Oxford, but is still in use at Cambridge. It is recognised by the Cambridge Award Act, 1856. It seems to be at the discretion of the authorities, and in most reported cases (*m*) the tradesman took nothing by his appeal to the courts. Disciplinary provisions are contained in the present university statutes and in many of the college statutes. Offences against university or college statutes, not being against the King's peace, cannot be pardoned by the King.

(*m*) A university has power to issue a decree, and enforce it by discommoning, that a debt of £5 contracted by an undergraduate must be reported by the creditor to the college, *Ex parte Death* [1840], 12 A. and E. 647. Discommoning was admitted as a remedy in *Re University of Oxford and Taylor* [1841], 1 Q. B. 952, but a prohibition issued to the Duke of Wellington, where as Chancellor he had ordered payment of costs or arrest in default. It is implied in the words of the Oxford statute, xxi, 1, 1, *commercio cum scholaribus et personis privilegiatis interdicto.*

CHAPTER V

EDUCATION

By the Board of Education Act, 1899, the universities are entitled to be represented on the consultative committee of the Board of Education. Apart from this provision, the numerous Education Acts do not affect the universities. Special provisions are made as to the authorities charged with the admission to the medical and legal professions. The privilege of university graduates of exemption from the bishop's licence, and afterwards from admission by the Royal College of Physicians, was confirmed by 3 Hen. VIII, c. 11, and 14 & 15 Hen. VIII, c. 5. A letter of Charles II, directing the College of Physicians not to admit any one to practise other than graduates of Oxford and Cambridge, was disregarded as unconstitutional in the argument of a case in the eighteenth century (*a*). The provisions of the statutes of Henry VIII must now be read subject to the Medical Acts, the latest of which is the Medical Act, 1886, under which the universities are represented by one member each on the General Medical Council, which is entitled to secure by inspection the maintenance of a standard

(*a*) *R.* v. *College of Physicians* [1797], 7 T. R. 282.

of efficiency in the medical examinations of the universities (*b*). As to solicitors, by 23 & 24 Vict., c. 127, and 40 & 41 Vict., c. 25, a person who has taken the degree of Bachelor of Arts or Bachelor of Laws may be admitted a solicitor after three years' service as an articled clerk (*c*), and after four years' service if he have passed certain university examinations. By 57 Vict., c. 9, a law degree, or a certificate of having passed the examinations necessary for it, exempts from the intermediate examination. Call to the bar does not depend on statute like the admission of solicitors. Students of the Inns of Court are by the Consolidated Regulations entitled to keep only three days a term if they are members of a university, and those who have passed the examination for the B.C.L. degree are relieved from part of the examination, as are also those who have passed any university degree examination in which Roman law is a qualifying subject. With regard to lectures, 39 Geo. III, c. 69, prohibiting the delivery of lectures in unlicensed premises, did not apply to lectures in the universities. This Act is now repealed, and the matter is regulated by 5 & 6 Will. IV, c. 65. The Act forbids the publication of lectures except by the lecturers or their assigns, but

(*b*) Licences to practise medicine and surgery are still nominally competent to the universities, but are not granted. Forms will be found in the Oxford Statutes, ix, 7, 1.

(*c*) It appears from *Ex parte Stewart*, [1872], L. R., 7 Exch. 202, that the degree must have been actually taken. It is not enough that the clerk is in the same position with regard to university privileges as if he had taken the degree.

its provisions do not apply to lectures delivered in a university or college (*d*). The position of a college lecturer is a little doubtful. The general rule is to give a term's notice on either side of termination of the engagement. But if one may argue from a recent endowed school case, it might possibly not be necessary on the part of the college. At the same time it should be noticed that this case proceeds on statutory authority, the Endowed Schools Act, 1869 (*e*). Several Acts of Parliament affect professorships and scholarships. 18 & 19 Vict., c. 36, provided for the salaries of certain scientific professors at Oxford. By the Act of 1862, which empowered the Vice-Chancellor to make rules of procedure for his Court (25 & 26 Vict., c. 26), provision was made as to new professorships of scientific subjects, and as to certain university scholarships. The original preference of founder's kin in the election to the Craven scholarships at Oxford was removed by 23 & 24 Vict., c. 91. Oxford was empowered by 28 & 29 Vict., c. 55, to make statutes as to the Vinerian foundation for the

(*d*) The plaintiff delivered from memory a lecture at the Working Men's College. The defendant attended the lecture and took shorthand notes, which he published in shorthand in *The Phonographic Lecturer*. Kay, J., held that the common law applied and an injunction was granted (*Nicols* v. *Pitman*, [1884], 26 Ch. D. 374). The later case of *Caird* v. *Sime* is set out in the Appendix.

(*e*) *Wright* v. *Marquess of Zetland*, L. R. [1908], 1 K. B. 68. The point of the decision was, that no custom could prevail against a scheme framed by the Charity Commissioners. As far as regards masters in endowed schools, the law has now been amended by the Endowed Schools (Masters) Act, 1908. But the principle of the case might possibly still apply in the case of a college lecturer.

teaching and study of law. In both universities up to 1868 undergraduates were required to be members of a college or hall. The admission of undergraduates not members of a college or hall was recommended as a fit subject for legislation by a committee of the House of Commons in 1868, but the proposed bill was never passed, and the admission of unattached students depends on university and not imperial statute. Both universities provide for the licensing of private halls or hostels owned by members of Convocation. The right of appointment of the head and other masterships in schools has now been superseded by schemes framed under the Public Schools Act, 1868, and the Endowed Schools Act, 1869. Among such rights formerly existing were those of Christ Church and Trinity, Cambridge, alternately to Westminster, Corpus, Oxford, to Manchester, St. John's, Cambridge, to Shrewsbury (*f*), and New College to Bedford (*g*).

An interesting case, perhaps somewhat remotely connected with university education, is one which came before the Court of Arches in 1877. It was a suit of *duplex querela*, arising out of the refusal of the Bishop of Oxford to institute the promovent to the rectory of Drayton Parslow in Bucks. The responsive plea of the bishop was that the archdeacon had examined the promovent and found him *minus*

(*f*) The right was originally in the Corporation of Shrewsbury, but delegated to St. John's. After 250 years the delegation was held valid as long as the college should nominate a fit person (*Mayor of Shrewsbury* v. *A.-G.* [1726], 2 Bro. P.C. 402).

(*g*) See *A.-G.* v. *Corporation of Bedford* [1754], 2 Ves. Sen. 505.

sufficiens in literatura. The promovent relied on the fact that over thirty years previously he had composed a Latin sermon to the satisfaction of the Regius Professor of Divinity at Oxford, and had had the degree of D.D. conferred on him by that university. No final judgment was delivered by Lord Penzance, and further proceedings were put an end to by the death of the promovent (*h*).

(*h*) *Willis* v. *Bishop of Oxford*, [1877], 2 P. D. 192.

CHAPTER VI

FINANCE

At common law universities and colleges were allowed to do pretty much as they pleased with their property, free from the interference of the legislature and the courts, unless where a trust was imposed or a nuisance caused. See, for instance, a form of writ of *vicontiel nusance* in Fitz. N.B., 185, calling on the Mayor of Oxford to abate the swine and filth corrupting the air to the nuisance of the masters and scholars, whom a dreadful terror strikes. Some of their old liberty still remains in their exemption from the Mortmain Acts (*see* next chapter). In other directions they have been restrained. Most of the early Acts deal with leasing. The Acts 13 Eliz., c. 10, and 18 Eliz., cc. 6 & 11 (*a*), avoided all leases made by colleges other than those made for twenty-one years or three lives (*b*); but the Acts did not

(*a*) So called because they were restrictions on the common law by which corporations aggregate could lease "without limitation or stint." Co. Litt. 44a. 13 Eliz., c. 10, is a private Act, and must be pleaded (*Carter's Case*, [1590], 1 Leon. 306). It applies to all eleemosynary corporations (*Magdalen Hospital* v. *Knotts*, [1879], 4 A. C. 324), where a lease for ninety-nine years at a peppercorn rent by such a corporation was held void.

(*b*) The Crown is bound by 18 Eliz., c. 10, therefore leases to the

or make leases by a college for such a term good if it were more than was limited by the college statutes. 14 Eliz., c. 11, extended the term to forty years in certain cases. By 18 Eliz., c. 6 (confirmed by 39 & 40 Geo. III, c. 41), one-third of the rent was to be reserved in corn. These Acts are generally known as "the Disabling Acts." Most of them are still nominally law, but later legislation has rendered them obsolete in practice. By 5 & 6 Vict., c. 14, power is given to the universities to appoint and remove inspectors of the corn returns on which the few existing corn rents are based. At present they are estimated on the certificate of the Board of Agriculture and Fisheries. The provisions of the Lands Clauses Acts, 1845, were, by 20 & 21 Vict., c. 25, applied to university and college property within a mile and a half of Carfax, where new buildings, etc., were required. The Ecclesiastical Leasing Acts exempt colleges from their provisions. The principal Acts now affecting the property of universities and colleges are the Universities and College Estates Acts, 1858 to 1880, and 1898 (*c*), (21 & 22 Vict., c. 44; 23 & 24 Vict., c. 59; 43 & 44 Vict., c. 46; 61 & 62 Vict., c. 55). The main provisions of these Acts are that the universities of Oxford,

Crown contrary to the Act are void (*Case of Ecclesiastical Persons*, [1601], 5 Rep. 14). So are grants to the Crown, the Crown to grant to the intended purchaser (*Magdalene College Case*, [1614], 11 Rep. 66). From that date up to the Act of 1858 a private Act was necessary for the sale of university or college estates.

(*c*) This somewhat cumbrous form seems to be the official mode of citing the Acts.

Cambridge, and Durham, the colleges of those universities, and Winchester and Eton are empowered to sell (*d*), enfranchise (*e*), mortgage, exchange, partition, and lease (*f*), within the powers conferred on a tenant for life by the Settled Land Acts, 1882 to 1890. No further beneficial leases are to be granted (*g*). Powers of sale, enfranchisement, exchange, partition, and building leases with option of purchase are not to be exercised without the consent of the Board of Agriculture and Fisheries (*h*). The Board may dispense with the report of a surveyor, and may authorise loans for university or college purposes, repayable by instalments, usually in thirty years. The purposes to which capital money may be applied and the improvements for which money may be borrowed are set out in the schedules to the Act of 1898. The practical effect of the Acts is that a university or college may grant, without the consent of the Board, a building lease (without

(*d*) Conveyance of lands to a college in satisfaction of a liability, fair at the time, will not be upset if at a later date they become of greater value. *A.-G.* v. *Pembroke Hall*, [1825], 2 Sim. and St. 441.

(*e*) The Copyhold Act, 1894, provides for enfranchisement where a university or college has leased a manor for life or lives or for years. For the purpose of enfranchisement the lessor and lessee jointly constitute the lord of the manor (57 & 58 Vict., c. 46, s. 78).

(*f*) In a lease by a college the head is bound to affix the college seal to the instrument, though he be in a minority (*R.* v. *Windham*, [1786], Cowp. 377).

(*g*) The fines on beneficial leases had been treated as revenue and not as capital. They were a windfall for the existing fellows, but the colleges as corporations derived no advantage from them.

(*h*) Originally the Copyhold Commissioners; superseded by the Land Commissioners in 1882, and by the Board of Agriculture in 1889. The words "and Fisheries" were added to the title by 3 Edw. VII, c. 31.

option of purchase) for ninety-nine years, a mining lease for sixty years, and any other lease for twenty-one years, except of the college itself. Capital money is usually payable to the Board, but the Acts do not authorise the vesting of land in the Board (*i*). The Board is entitled to costs of appearance on petition by the lord after enfranchisement for investment of the fund (*k*). Money arising from the compulsory sale of land under the Lands Clauses Acts, 1845, standing in court cannot be applied for new buildings of a college without the consent of the Board. If the Board consent, whether by order under seal or by appearing by counsel in court, an order for such application will be made under the Act of 1880, although it is not one of the modes authorised by the Lands Clauses Act (*l*).

Numerous Acts deal with tithe rent-charge (*m*), and with the augmentation of benefices and the building, repairing and purchasing houses or buildings for the use of benefices by the loan of money without interest (*n*). Grants of land may be made

(*i*) It has not been thought necessary to give more than an abstract of the main provisions of the Acts, as the editions of the Acts by Mr. W. B. Skene and Mr. W. B. Gamlen contain the text of the Acts and can easily be consulted.

(*k*) *Ex parte Queens' College* [1857], 27 L. J., Eq. 178.

(*l*) *Ex parte King's College* [1891], 1 Ch. 883, 877.

(*m*) A grant of lands by the Crown to a college does not exempt the college from payment of tithe (*Archbishop of Canterbury's Case*, [1596], 1 Rep. 46; *Magdalene College Case*, [1614], 11 Rep. 66). For the validity of a *modus* dating from before 13 Eliz., c. 10, see *Jesus College, Oxford* v. *Gibbs* [1885], 1 Y. & C. 145.

(*n*) Especially 29 Car. II, c. 8; 1 & 2 Will. IV, c. 45; and 1 & 2 Vict., cc. 26 and 106.

for valuable or nominal consideration or by way of gift, with the consent of the Board, for the purpose of open spaces for the enjoyment of the public, with or without conditions (50 & 51 Vict., c. 32, s. 7). Grants of sites may also be made under the Literary and Scientific Institutions Acts, and under the School Sites Acts; in the case of the latter not to exceed one acre. A lease may be granted instead of a conveyance (*o*). A large number of both public and private Acts deal with markets, tolls, widening and paving streets, gas, water, and other matters of local government. Stamp duties or degrees were abolished at Oxford by 18 & 19 Vict., c. 36; at Cambridge by 21 & 22 Vict., c. 11; on matriculations

(*o*) At one time the law was much more severe than it is at present with regard to the correct description of the lessor, but there was a tendency to support the lease if possible. Queen's leased to Hazel the Maison Dieu at Southampton, the college describing itself as *Præpositus socii et scholares Collegii Reginalis Gardianus Hospitalis*. On ad *ejectio firmæ* it was urged that *gardianus* ought to be *gardiani*, "for the college doth consist of many persons and every person is capable." But the court held that a college is one body, and so the singular number was sufficient (*Queen's College Case*, [1588], 1 Leon. 184). The misnomer of Trinity, Cambridge, as lessors did not avoid the lease (*Trinity College Case*, [1600], 2 Brownl. 213). In another Queen's case it was held that confirmation of a demise by *præpositus socii et scholares Aulæ vel Collegii Reginæ* was good although the name given by the founder was *Aula scholarium Reginæ* (*Ayray* v. *Lovelace*, [1614], 1 Bulstr. 91, also reported as *Dr. Ayraye's Case*, 11 Rep., 18). In a case to the contrary effect, the omission of the words *Beatæ Mariæ* in a lease by the Provost and Fellows of the *Collegium Beatæ Mariæ de Eaton juxta Windsor*, was a misnomer sufficient to avoid the lease (Jenkins, Cent., v, 54). As to devises, it was held that a devise to "Sir John College" was good in equity as an appointment to charitable uses (*A.-G.* v. *Platt*, [1676], Finch, 221). The college intended was St. John's, Cambridge. For a wrong description in a grant by the Crown see *Dean of Christ Church* v. *Parott* in Appendix.

by the Acts of 1854 and 1856 respectively. By 2 & 3 Will. IV, c. 80, colleges were authorised to enter into agreements with their lessees for the purpose of settling unknown or disputed boundaries or quantities of property leased.

The Acts affecting the liability of universities and colleges to imperial and local taxation are very numerous (*p*). Colleges at Oxford and Cambridge, the colleges of Eton, Winchester, and Westminster, and the stipends of university professors and readers, and of college masters, fellows, scholars and exhibitioners, are exempt from land tax (38 Geo. III, c. 5; made perpetual by 38 Geo. III, c. 60) (*q*). As to estate duty, by the Finance Act, 1894 (57 & 58 Vict., c. 30, s. 15 (2)), the Treasury may remit it in respect of pictures, prints, books, manuscripts, works of art, or scientific collections of national, scientific or historic interest given or bequeathed to any university (*r*). Allowances in respect of the duties payable under Schedule A of the Income Tax Act, 1842, are to be made for repairs of colleges or halls, and for college buildings and offices not occupied by an individual member or any person paying rent for them, and for repairs of the college buildings, offices and gardens (5 & 6 Vict., c. 35, s. 61). By the

(*p*) The earliest statutory exemption from taxation appears to have been an ordinance of the Commonwealth of 1645.

(*q*) University and college property is not exempt from land tax, but much of it has been redeemed. In *All Souls College* v. *Costar* [1804], 3 B. and P. 635, it was held that a purchase of lands on condition of the college paying all taxes rendered it liable to pay land tax on the land purchased.

(*r*) The exemption does not apply to colleges.

Finance Act, 1907 (7 Edw. III, c. 13, s. 21), every corporation must, after notice from the assessor, deliver a return of the names and salaries of persons employed (*s*). Inhabited house duty is charged on every separate chamber or apartment in a college or hall (14 & 15 Vict., c. 36) (*t*). Any college or hall at Oxford and Cambridge, and all offices and employments in connection therewith, and all persons residing therein, are within the jurisdiction of the general commissioners of the university with respect to assessment of income tax and inhabited house duty (53 Vict., c. 8). The tax of five per cent. on corporate property imposed by 48 & 49 Vict., c. 51, does not affect property appropriated for the promotion of education.

The liability of Oxford to poor rate is mainly determined by 17 & 18 Vict., c. cexix, of Cambridge, by 19 & 20 Vict., c. xvii. The public buildings of the university, and the college chapels and libraries, are exempt by the Cambridge Act (*u*). The Oxford Act provided for the right to exemption being decided

(*s*) Before this Act it was held that the bursar of St. John's, Oxford, not on the foundation, was liable to direct assessment under Schedule E, as the holder of an office of profit (*Langston* v. *Glasson*, [1891], 1 Q. B. 567). His tax would now probably be paid through the college, and he would be entitled to claim the lower scale on his stipend as "earned income" under s. 19 of the Act.

(*t*) See *Southwell* v. *Royal Holloway College*, [1895], 2 Q. B. 487, where the duty was held to attach in the case of a college not intended for gratuituous education, which had an endowment and charged fees. All this applies exactly to a college at Oxford or Cambridge.

(*u*) Downing was held liable for a paving rate, although founded after the Cambridge Paving Act of 1788 (*Downing College* v. *Purchas*, [1832], 8 B. & Ad. 162).

by the Queen's Bench on a case stated. This was done in 1857, and it was held that the public buildings of the university were exempt, but not the college chapels and libraries (*x*). Other rates, such as the general district rate, the education rate, etc., follow the same lines, as they are now collected together. In the case of the Oxford University Boat Club barge it was held that there was no proof of occupation so as to render the club liable to poor rate. The right was merely an easement (*y*).

The universities and colleges as property owners might be civilly or even criminally liable, the latter probably only for *quasi*-criminal offences, such as non-repair or obstruction of a bridge or highway (*z*). They are undoubtedly liable for injuries to their servants, under the Workmen's Compensation Act, 1906, for the interpretation clause of the Act (s. 13) includes under employer "any body of persons corporate or unincorporate."

Very little public money is paid to the older universities. Most of it goes to those of more recent foundation. As far as Oxford and Cambridge are concerned, the only cases seem to be certain grants to the Regius Professors, by the Board of Agriculture and Fisheries for agricultural education, by the India Office in aid of the tuition of selected candidates for the India Civil Service, and to the Preaching Fund (Henry VII's obit).

(*x*) *Re Oxford University*, 8 E. & B. 184.
(*y*) *Grant* v. *Oxford Local Board*, [1868], L. R., 4 Q. B. 9.
(*z*) *R.* v. *G. N. E. R. Co.* [1846], 9 Q. B. 315.

By the statutes framed under the authority of the Act of 1877 the accounts of the universities and colleges are audited annually and after audit published in a particular form; a general account of (1) capital, (2) revenue, an account of special and trust funds, and a schedule of loans from the Board of Agriculture and Fisheries, showing the sum borrowed and the instalments remaining due. At Oxford the finance ministers are the Curators of the University Chest (*a*), at Cambridge the Financial Board.

Although a corporation cannot be a copyholder, still heriot custom may be due on the death of the head of a corporation (*b*), or by one corporation to another (*c*).

(*a*) The name comes from the medieval *cista*, so important in the medieval university, but there is little else in common.

(*b*) See the case of the Provost of Worcester, Grant, 109.

(*c*) See the case of Merton and Magdalen, *ib.* Another curious Merton case could hardly occur now. It is an echo of the Wars of the Roses. Parliament had granted lands of Merton to King's. Merton recovered them by attachment following proceedings for forcible entry, [1464], Y. B., 3 Edw. IV, 1.

CHAPTER VII

PRIVILEGE

PRIVILEGE attaching to universities is no new thing (*a*). In the Roman Empire a constitution of Diocletian and Maximian, about 300, put students of law at Berytus in a privileged position (*b*). So did the constitution of Justinian, *Omnem reipublicæ*, sect. 9, introductory to the Digest (533). The same was done for Bologna by Frederic Barbarossa in the constitution *Habita*, promulgated at Roncaglia in 1158, and strangely included in the Code of Justinian (*c*). The privileges of English universities have been continually recognised by charters and by Parliament, not least where it abrogates some of them, and are still jealously guarded by the university authorities. Delegates of privileges are annually appointed at Oxford. The privileges are based partly on immemorial usage, partly on charters and statutes confirmatory of rights existing by papal bull or usage, partly on statutes conferring new privileges. Most of them are what may be

(*a*) "A university without privileges is like a body without a soul," says Bulæus, i, 98.

(*b*) Cod. x, 49, 1.

(*c*) Cod. iv, 13.

termed negative—that is to say, they are in the nature of exemptions from the law attaching in similar matters elsewhere. Some are obsolete, either by abandonment or by legislation (*d*). The most important existing one is the jurisdiction of the university courts, to be separately treated in the following chapter. Another important one is the exemption of the universities and colleges from the disability to take gifts in mortmain under which most corporations lie. Part I of the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict., c. 42, s. 7), applies to the universities and their colleges, so that they cannot accept gifts in mortmain, that is, gifts for other than charitable purposes, without a licence in mortmain from the Crown. Nor can they purchase lands out of revenue or capital without a licence. But a licence once granted is good for all time, and most colleges are in possession of such a licence, generally up to the amount of a sum named. Part II of the Act (*i.e.*, that relating to charitable uses) does not apply to "an assurance

(*d*) Among these may be named the licensing of premises for the sale of wine or ale, of booksellers, and of carriers, the right to probate of wills and to goods of suicides. Licences to beg were issued up to 1572. King's had the right to create notaries and to hang on its own private gallows (2 Rashdall, 574). The privilege of nobility (*jus natalium*) existed at Oxford up to 1868, at Cambridge up to 1864. The English universities never claimed the Parisian privilege of cessation —*i.e.*, the closing of the university during disputes with the Crown. Vienna seems to have done something very like it as recently as 1908. A curious privilege was the exception from the prohibition of giving of liveries by 8 Edw. IV, c. 8 (repealed in 1868), of "any livery given or to be given . . . at the commencement of any clerk in the university."

of land or personal estate to be laid out in the purchase of land to or in trust for any of the universities of Oxford, Cambridge, London, Durham and the Victoria University (*e*), or any of the colleges or house of learning within those universities (*f*) . . . . or to or in trust for the warden, council, and scholars of Keble College" (*g*). The practical effect of this is that gifts for the purposes named in the section may be made without the restrictions imposed upon ordinary charitable gifts by the Act of 1888 and by the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict., c. 73). In order to fall within the exemption, gifts must be such as the law would regard as charitable. By sect. 13 of the Act of 1888, references to charities within the meaning of 43 Eliz., c. 4 (repealed by the Act), are to be construed as references to charities within the meaning of the preamble to 43 Eliz., c. 4, that is to say, the preamble is still the standard for determining what a charity is. Among other objects named in it are the maintenance of schools of learning (*h*)

(*e*) The old federal university is meant, not the present Victoria University of Manchester. It and the universities of Liverpool and Leeds are now in the same legal position.

(*f*) The Act would no doubt apply to all colleges, whether founded before or after the Act. It was held that the previous Mortmain Act of 1736 applied to colleges founded before it (*Christ's College Case* [1757], 1 W. Bl. 92).

(*g*) The exemption probably would not apply to a corporation sole who is, like the Master of Pembroke was, at the same time a member of a corporation aggregate. Nor would it apply to the Chancellor of Oxford, who, according to an old decision, possibly not law now, is a corporation sole (*Chase's Case*, Y. B. 8 Hen. VI, 18. See p. 120).

(*h*) Universities and colleges are included under schools of learning ([1767], *A.-G.* v. *Downing*, Wilmot, Opinions, 1). Gifts for the

and of scholars in universities. It seems from this, that a trust for the support of a scholar or exhibitioner, not attached to any university or college, would be an ordinary charitable use, and would not fall within the exemption of sect. 7. The Universities Act, 1877, provides by sect. 60 that a licence to alien or take or hold in mortmain shall be unnecessary in respect of cases of compulsory purchase of lands for university or college purposes, allowed by 19 & 20 Vict., c. 25 (Cambridge), and 20 and 21 Vict., c. 88 (Oxford)(*i*). A conveyance to a university or college needs no words of limitation. The limitation, if used at all, should be to "successors." Where a gift which is regarded by

foundation of fellowships, scholarships and prizes have been held to be charitable. For a discussion of the meaning of "charitable purposes," see *Commissioners of Income Tax* v. *Pemsel* [1891], A. C. 531. Lord Bramwell in his judgment says, "Charity, in its legal sense, comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law because incidentally they benefit the rich as well as the poor." This meets the case of fellowships and other endowments for persons who could not be called objects of charity in the popular sense of the word.

(*i*) Even before the Mortmain Act of 1736 a devise to a college, though void as a devise to a corporation, might have been supported under 43 Eliz., c. 4. This was held in the case of a devise to Jesus, Oxford, of lands in Cardiganshire for the support of a scholar of the founder's blood (*Flood's Case* [1616], Hob. 136). It is otherwise where the devise is in trust. Tancred devised an estate to Christ's and Caius for certain studentships to take effect as a charitable gift if contrary to the Act of 1736. It was held good as a charitable gift, but not good under the exemption of the Act, which only protects gifts for the benefit of the college (*Christ's College Case*, above).

law as a charitable gift is made by will and refused in whole or in part, the gift or the residue of it is generally administered cy-près. Under this principle on the University of Oxford declining a gift of £2,000 for a prize in divinity on the terms of the will, it was granted on other terms (*k*). In another case scholarships were given to Trinity Hall, and on that college declining, were transferred to St. John's, Oxford (*l*). Property was originally given in part for the purpose of redeeming British captives in Africa, in part to endow scholarships at the universities. A scheme was approved for increasing the number of emoluments of the scholars (*m*). In a more modern case, a testatrix had bequeathed a sum of money in 1643 to be applied to the relief of the poor and the apprenticing of poor boys in the parish of Kensington. A scheme was settled by the Charity Commissioners for diversion of part of the charity for, *inter alia*, exhibitions at higher places of education. This scheme was confirmed by the Court (*n*). The doctrine of cy-près has had statutory sanction in the Act dissolving chantries, 1 Edw. VI, c. 14, and diverting their revenues for the benefit of schools and universities, and in the Endowed Schools Act, 1869. Under this Act no scheme may be made by the Charity Commissioners interfering with any exhibition forming part of the foundation

(*k*) *Denyer* v. *Druce* [1829], cited 8 Hare, 194.
(*l*) See Appendix.
(*m*) *A.-G.* v. *Bishop of Llandaff*, cited 2 Myl. and K. 586.
(*n*) *Re Campden Charities*, [1881], 18 Ch. D. 310.

of any college in Oxford or Cambridge without the assent of the college.

A gift to a university or college, to be within the exemption of the Mortmain Act, must be for university or college purposes. An instance of such a gift of real estate was made in 1640 for the purchase of books and the repair of the library of Trinity, Oxford. Accretions in the revenue were applied by the Court to augment the income (*o*). A devise of a house to university, not for academic or collegiate purposes, but that a fellow of the college should occupy it, was held void under 43 Eliz., c. 4, and the Act of 1736 (*p*).

The universities have considerable privileges in the matter of press monopoly and copyright (*q*). By 15 Geo. III, c. 53, Oxford and Cambridge, the Scottish universities, and Eton, Westminster and Winchester, have the sole right of printing and reprinting such books as shall have been or may be bequeathed to them, provided the books be printed at their own presses and for their own benefit. By 39 Geo. III, c. 79, the university presses of Oxford and Cambridge need not be licensed. The Copyright Act, 1842 (5 & 6 Vict., c. 45), enacts that the Bodleian Library at Oxford (*r*), the public library

(*o*) *A.-G.* v. *Marchant* [1866], L. R., 3 Eq. 424.

(*p*) *A.-G.* v. *Whorwood* [1750], 1 Ves. Sen. 534. To the same effect is *A.-G.* v. *Munby* [1816], 1 Mer. 327.

(*q*) For the Oxford Press see Blackstone's Law Tracts and F. Madan, The Oxford University Press (1908).

(*r*) The right of the Bodleian Library vested originally on an indenture made between Sir Thomas Bodley and the Stationers' Company in 1610. Apart from the Copyright Act, the library is

at Cambridge, and the library of Trinity College, Dublin, have a right to a copy of every book or edition published in the United Kingdom on demand under the hand of the officer of the Stationers' Company appointed for the purposes of the Act (*s*). The Act saves all rights of the universities named, and also of the Scottish universities, Eton, Westminster and Winchester, to all subsisting copyrights. This would include copyrights under 15 Geo. III, c. 53, and the monopoly of publishing bibles (*t*), prayer books, and statutes (*u*) *pari passu* with the King's printer (*x*). The right of printing almanacks has been decided not to be a monopoly of the universities (*y*). In consequence of the decision, 21 Geo. III, c. 56 (*z*), was passed, granting the

entitled under that agreement to a copy of every book printed by a member of the Company.

(*s*) The university libraries only obtain the books after due demand; the library of the British Museum is entitled to a copy without demand.

(*t*) This applies only to the plain English text, not to annotated editions or to editions in other languages, such as the Vulgate or the Greek Testament, or modern versions, such as those published by the Bible Society.

(*u*) In *Basket* v. *Cambridge University* [1758], 1 W. Bl., 105, it was held that the privilege of printing statutes was shared with the King's printer.

(*x*) All these privileges are remnants of originally greater ones. Letters patent in 1532 allowed Oxford and Cambridge three printing presses each, subject to the approval of the Chancellor or Vice-Chancellor and three doctors. An ordinance of the Star Chamber of 1585 allowed only three presses in England, one in London, one at Oxford, and one at Cambridge. Every book must have been approved by the Archbishop of Canterbury or the Bishop of London. Delegates *de impressione librorum* appear to date from 1586, and Laud obtained letters patent in 1633.

(*y*) *Stationers' Company* v. *Carnan* [1765], 2 W. Bl. 1004.

(*z*) Repealed by Statute Law Revision Act, 1861.

universities an annual sum of £500 as compensation. Copyright in lectures has been already mentioned. Books printed at the university presses need not bear the name of the printer, but must bear "Printed at the University Press, Oxford," or "the Pitt Press, Cambridge," as the case may be (2 & 3 Vict., c. 12) (*a*).

Parliamentary representation of Oxford and Cambridge, two burgesses for each, was first granted by charter of James I, dated 12th March, 1603-4, in accordance with the opinion of Sir Edward Coke, then Attorney-General (*b*). No occupation or other property qualification is necessary for the electors for burgesses of the universities (*c*). The electors are members of Convocation or of the Senate who are of the degree of M.A. at least, as long as the degree is not honorary. The procedure at elections is governed by 16 & 17 Vict., c. 68; 24 & 25 Vict., c. 35; 31 & 32 Vict., c. 65. The Vice-Chancellor or his deputy is returning officer. Elections last

(*a*) The terms in modern times have been altered to "Clarendon Press" for Oxford and "University Press" for Cambridge. It may be doubtful whether there is now any privilege of omitting the printer's name, the Act having been repealed in 1869. A reference to any books printed at a university press will show that the name of the printer to the university is given.

(*b*) An earlier summons for the Parliament of 1305 will be found in 1 Palgrave, Parliamentary Writs, 91. After that the issue of the summons was suspended for three centuries.

(*c*) Up to 21st May, 1885, graduates of colleges residing in rooms in college had no votes for the city of Oxford or the borough of Cambridge, a disability confirmed by sect. 257 of the Municipal Corporations Act, 1882. This was altered by the Registration Act, 1885, s. 15, and they are now inhabitant occupiers, subject, of course, to sufficiency of residence and full age.

five days; the voting is public; and the vote of a non-resident elector may be given by means of a voting paper attested by a justice of the peace or other authority. This privilege is specially preserved by the Ballot Act, 1872.

The privileges as to licensing public-houses and inspecting weights and measures are preserved by the Licensing Acts and the Weights and Measures Acts, except as altered by Acts specially affecting the universities. For instance, the power of the Vice-Chancellor to license alehouses at Cambridge was abolished by the Cambridge Award Act, 1856 (*d*). Wine licences depend on 10 Geo. II, c. 40, and other Acts. As far as regards Oxford, such licences, originally granted under the powers of a charter of Edward III, confirmed by one of 1636, were resigned by decree of Convocation, and are now granted by the mayor under the Oxford Corporation Act, 1890 (53 & 54 Vict., c. cexxxiii). See *Roberts* v. *Twining*, "Law Times," May 8, 1909, p. 30. A curious exemption is that from the restrictions imposed on the growth of tobacco by 12 Car. II, c. 34, and other Acts. The Acts allow tobacco to be grown to the amount of half a pole in the botanic garden of a university. Oxford is exempt from the jurisdiction of the College of Arms. Vice-Chancellors and heads of houses were, when a property qualification for magistrates existed, exempt from it by 18 Geo. II, c.

(*d*) It had been admitted by the King's Bench in 1840 on the ground that it was necessary for the prevention of disorder among the younger students (*R.* v. *Archdall*, 8 A. & E. 281).

20, as far as regarded the counties of Oxford, Berks, and Cambridge. The universities and colleges are exempt from the jurisdiction of the Charity Commission, except as to school exhibitions, with the assent of the university or college (16 & 17 Vict., c. 137; 32 & 33 Vict., c. 36). A resident member of a university is not bound to serve in the militia (42 Geo. III, c. 90).

The remaining privileges to be mentioned are of an ecclesiastical character. The head of a college is usually the ordinary. If in holy orders he must apparently still read the morning prayer once a quarter (14 Car. II, c. 4, s. 13). There are some curious provisions as to the language in which the liturgy may be used. By 2 & 3 Edw. VI, c. 1, matins, evensong, litany, and all other prayers—the Holy Communion commonly called the Mass excepted—may be said in Greek, Latin, or Hebrew in college chapels not being parish churches. By 14 Car. II, c. 4, s. 14, morning and evening prayer and all other prayers and service prescribed by the Act may be used in Latin. The Act does not expressly repeal the Act of Edward VI, but as it is inconsistent with it and later in date, it is probable that Latin is now the only authorised foreign language. By 27 Hen. VIII, c. 42, and 1 Eliz., c. 4, the universities and colleges are discharged from the payment of first fruits and tenths. The presentation to benefices in the gift of Roman Catholics was first conferred on the universities by 3 Jac. I, c. 5. Further provisions were made by 1 W. & M., c. 26; 13

1 Anne, c. 13; 11 Geo. II, c. 17; 10 Geo. IV, c. 7; and the Benefices Act, 1898 (61 & 62 Vict., c. 48). By sect. 7 of this Act the universities may elect to a benefice in the gift of a Roman Catholic patron a clerk who already has a cure of souls. This had been forbidden by the previous Acts. Oxford presents in the south and west of England, South Wales (except Glamorgan), and the City of London; Cambridge in the north and east, North Wales, and Glamorgan (*e*). 1 & 2 Vict., c. 106, dispenses heads of houses, the warden of Durham, and certain head-masters from the penalties for non-residence on their benefices. Professors or public readers, while resident and lecturing, are privileged for temporary non-residence. The Canons of 1603 contain a considerable amount on the subject. A fellowship (*f*) or residence at the university of a M.A. of five years' standing is a title for orders, and the universities have co-ordinate rights with the ordinary in the right of licensing a lecturer or reader in divinity or a preacher in a cathedral or collegiate church (*g*). In one case what may be

(*e*) The question as to any disputed right of presentation is generally tried by quare impedit in the High Court or duplex querela in the Spiritual Court. The university had to prove that the patron was a popish recusant (*Chancellor of Oxford's Case* [1614], 10 Rep. 53). For a lengthy and strongly contested case, see *Lord Petre* v. *Cambridge University* [1692], 2 Lutw. 1100. The modern case of *Boyer* v. *Bishop of Norwich* is set out in the Appendix.

(*f*) This privilege appears to have been originally confined by papal bull to New College and King's. It is a title now only in the dioceses of Oxford and Ely; but other bishops may admit it at their discretion.

(*g*) This *licentia concionandi* is still nominally competent by the Oxford statutes, ix, 7, 1.

called the reverse of privilege obtains. A presentation of the head of a college to a living by the college is void because presentor and presentee are the same. Illogically, because the alleged ground is the same, this does not apply to the presentation of a fellow. The old privilege of holding deaneries and certain other appointments with headships was abolished by 13 & 14 Vict., c. 98, the deanery of Christ Church excepted. The same Act forbids the holding of cathedral preferment with headships, unless where it is part of the endowment, as at Pembroke, Oxford (*h*).

One of the Canons, obsolete since the change in the law made by the Endowed Schools Act, 1869, enabled the ordinary to license a curate who was of the degree of B.A. or M.A. to teach where there was no public school. Other matters connected with the universities for which the Canons make provision are the wearing of surplices in chapel on Sundays and saints' days, and the production of a testimonial from a college before admission of one of its graduates to holy orders (*i*).

The Private Chapels Act, 1871 (34 & 35 Vict.,

(*h*) Judicial preferment has sometimes been held with a headship, *e.g.*, Dr. Lewes, Principal of Jesus, Oxford, was judge of the High Court of Admiralty in 1558 and as late as the last century Sir H. J. Fust was Master of Trinity Hall and Dean of the Arches.

(*i*) Forgery of such a testimonial would probably not be a misdemeanour at common law, judging from the analogy of a case in which it was held that it was not criminal to forge a diploma of the College of Surgeons with intent to induce belief that he was a member of the college (*R.* v. *Hodgson* [1856], Dears. & B. 3); but forgery of the college seal, if attached, would be a felony.

c. 66), enacts that the bishop of the diocese may license a college chapel, except for solemnisation of matrimony. The minister of such a chapel is subject to no control or interference on the part of the incumbent of the parish. The offertory and alms are to be disposed of as the minister shall determine, subject to the direction of the ordinary. It should be noticed that a university as well as a college may be a rector, though it could not be a vicar. Thus Cambridge was created Rector of Somersham by 45 & 46 Vict., c. 81.

CHAPTER VIII

THE UNIVERSITY COURTS

THE literature on this subject is of vast proportions. All that can be done in this place is to afford a guide to some of the main points, illustrated by cases. Only a selection of the numerous cases can be given, especially as many of the older ones are either no longer good law or deal with circumstances which have passed away or on points of obsolete pleading (*a*).

The courts are the Chancellor's or Vice-Chancellor's, those of the High Steward and of the coroner, and the leet (*b*). The first is the most important in history and in practice (*c*). It seems to have existed as long or almost as long as the Chancellor himself and

(*a*) *E.g.*, that a defendant cannot claim privilege by demurrer, *Davies* v. *Stringer*, [1696], Carth., 354. Demurrers no longer exist.

(*b*) The old Court of Hustings at Oxford, now obsolete, was a city and not a university court.

(*c*) Its real name may be considered doubtful, as both are used. For instance, the official title of the MS. series of decisions is *Acta Curiae Cancellarii*; in the Oxford statutes it is *Curia Commissarii sive Vice-Cancellarii*. On the other hand the assessor is called in a university statute of 1897 assessor in the Chancellor's court. Possibly the name of Vice-Chancellor's court became common when the Chancellors ceased to be resident graduates. In the fifteenth century deputies called *hebdomadarii*, no doubt because they sat weekly, frequently acted. Unlike the Chancellor they were subject to challenge (*recusatio*).

has been for many centuries a necessary adjunct to the position. But the procedure and jurisdiction of the courts of the two universities have never been the same, and even now they differ in several important particulars, especially that the Cambridge court can only try cases where both parties are members of the university. The theory of a court for privileged persons is not peculiar to England, the *privilegium fori* was found at Paris and Bologna, but has not been adopted in the newer English universities. In one of the Bentley cases the existence of the Cambridge court was pleaded as being of immemorial antiquity. Cases occur as early as the Year Books in which the Chancellor's jurisdiction was considered by the superior courts and sometimes admitted and sometimes not. The procedure before recent changes was by the civil and not by the common law, *i.e.* inquisitorial and not accusatorial (*d*). By the Act of 1854 the common law procedure was substituted at Oxford. The Act of 1856 has no corresponding provision as to Cambridge, but it may be taken that since the Act of 1894 the common law procedure is the one adopted at Cambridge. The cases noted in Anstey and other sources, such as Brian Twyne and Ayliffe, show how multifarious were the matters coming before the Chancellor or his deputy in his judicial capacity. Administration of oaths to the sheriff to assist the Chancellor, to keep the peace (*e*),

(*d*) *Dijudicant per jus civile et secundum juris civilis formam*, Sir Arthur Duck, *De Usu et Authoritate Juris Civilis*, ii, 8, 8, 30 (1654).

(*e*) *Oweyn, Clericus, Vicarius Sti. Aegidii, juravit super librum*

that the principal of White Hall is not a Scotsman. Licences to beg and to preach. Proof of Wills. Compurgation. Shooting at the proctors. Wearing swords. Abjuration of playing tennis. Sanctuary in Broadgates Hall. Embezzlement of contributions towards a college cook's annual "beanfast." Excommunication (*f*) and pillory. Oath of sojourner that he was well disposed to the king. Appointment of Clerks of the Market (*g*).

William of Drogheda the canonist, in his *Summa*, shows how he made three actions out of one *injuria* in the court (*h*). In 1716 Ayliffe was prosecuted in the court for some expressions in the appendix to his "Ancient and Present State of the University," one of the main authorities on the court. He had accused the Warden of New College of misappropriating the revenues of the college (*i*). In 1693 proceedings were taken against Anthony Wood for

de pace servanda, induxit baculum (gave up the stick), *et solvit duos solidos* (Anstey, 668). The Chancellor, besides having to determine a question of fighting, might have to fight himself. In the fourteenth century there was a pitched battle at the Smithgate between him and Roger of the Dead Sea, B. Twyne, *Apologia*, 295 [1608]. It may be noticed that Twyne's MSS. are difficult of access, as they appear to be in three different places.

(*f*) The power of excommunication no doubt depended on the original position of the Chancellors as delegates of the bishops of Lincoln and Ely.

(*g*) These still exist, but the office is now a sinecure. At Cambridge they never existed, but similar powers were granted against forestallers and regrators by patent rolls of Edward II and Richard II. See Documents relating to the University and College of Cambridge, pp. 5 and 26.

(*h*) F. W. Maitland, Eng. Hist. Rev., xii, 652.

(*i*) See *The Case of Dr. Ayliffe at Oxford* [1716], supposed to have been written by Ayliffe himself.

a libel on the Earl of Clarendon's father (*k*). The Cambridge court in 1718 deprived Bentley of his degrees. Two modern Oxford cases of interest will be found in the Appendix. The rights of the courts were continually limited by prohibition and by imperial legislation. It was early settled that they could not entertain questions affecting the freehold (*l*), or *quo warranto*, or *quare impedit*. As to equity the matter was more doubtful. In 1675 the claim of the Oxford Chancellor to hold a court of equity was disallowed (*m*). In 1714 a similar claim was allowed (*n*). Perhaps the best solution is to be found in a case of intermediate date, where the Court of Chancery held that the jurisdiction of the Oxford court extended to matters in common law or to proceedings in equity that might arise in such cases, not to pure matters of equity, such as specific performance (*o*). It is submitted that this probably represents the modern law and that the Chancellor's court is in much the same position as the King's Bench Division when a question of equity comes before it. It has been held that the superior court cannot take judicial notice of the privilege of the Chancellor's court. Being a franchise it must be pleaded. In this particular case the university was

(*k*) Described in Vol. iv of Wood's Life and Times.

(*l*) This was held as to land in Cornwall claimed against the Rector of Exeter, *Stephens* v. *Berry* [1688], 1 Vern. 212. The case is interesting as being one of the numerous proceedings against Dr. Bury or Berry. See Appendix.

(*m*) *Prat* v. *Taylor*, Cas. in Ch., 237.

(*n*) *Alderidge* v. *Stratford*, 22 Vin. Abr., 11.

(*o*) *Draper* v. *Crowther* [1685], 2 Vent., 362.

put to declare in prohibition (*p*). Whether the jurisdiction of the court can be waived by a litigant entitled to take advantage of it is somewhat doubtful. In an action for defamation it was not allowed (*q*). In a later case the defendant, a non-privileged person, waived objection to the jurisdiction, then afterwards appeared and defended on the merits. He was arrested by warrant of the Duke of Wellington and ordered into custody till he had satisfied the debt. It was held by the King's Bench that he might still be discharged on *habeas corpus* and might insist before the superior court on the want of jurisdiction (*r*).

The Oxford court is regulated by a statute of the university of 1636, amended by later statutes, and by statutes of the realm and rules framed thereunder, all in more or less accordance with previous charters. The jurisdiction extends over every *scholaris vel persona* (*s*) *privilegiata in universitate degens*, and that when only *una pars scholaris*, provided that the matter is a civil one. Criminal proceedings have been dealt with in the chapter on Discipline. The imperial statutes regulating the Chancellor's court are those of 1862 and 1884, the university statute is Tit. xxi (*De judiciis*). By the Oxford University Act, 1862 (25 & 26 Vict., c. 26, s. 12), the Vice-Chancellor was empowered, with the approval of any three judges

(*p*) *Cambridge University* v. *Price* [1697], Skin., 665.
(*q*) *Wilcocks* v. *Braddell* [1628], Cro. Car., 73.
(*r*) *Perrin* v. *West* [1835], 3 A. & E. 405.
(*s*) *Persona* includes a college, *Magdalen College Case* [1674], 3 Mod., 168.

of the superior courts, to make rules for regulating the practice and forms of procedure in all proceedings within the jurisdiction of the court of the Chancellor of the university commonly called the Vice-Chancellor's court, and with the like approval to annul, alter, or add to any such rules. The Supreme Court of Judicature Act, 1884 (47 & 48 Vict., c. 61, s. 24), enacts that where by virtue of any statute or charter or otherwise powers of making rules and orders for regulating the procedure or practice of or the costs or fees of any inferior court of civil jurisdiction (*t*) are given to or have been exercised by the judge of any such court . . . any rules or orders made after the commencement of the Act by virtue of any such powers as aforesaid shall be subject to the concurrence of the authority for the time being empowered to make rules for the Supreme Court. Further provision is made for the alteration or annulment of any existing rule or order. Under the powers of this Act rules of procedure were made on 21st March, 1892, by the Vice-Chancellor with the approval of the Rule Committee of the Supreme Court. These rules were amended on 20th October, 1907. They will be found in the *Gazette* of the respective years. They repealed the rules of 1864 made under the Act of 1862.

(*t*) The Chancellor's Court is a court of record, bu tis at the same time an inferior court to which prohibition or certiorari will lie. In this it resembles the County Courts. The Common Pleas in *Kemp* v. *Neville*, p. 131, admitted that the Cambridge Court is a court of record, but the case was decided on the facts, and no certiorari was applied for. It was granted in *R.* v. *Vice-Chancellor of Cambridge*, p. 126.

The ordinary judge is an assessor, appointed by the Vice-Chancellor under a university statute of 1897 (*u*). Under the same statute a registrar of the court is appointed by the Chancellor by letters patent, and "a competent number of solicitors" may be admitted as proctors by the Vice-Chancellor.

Appeals formerly lay in spiritual cases ultimately to the Pope (*x*), then to the Arches Court of Canterbury, in secular cases to the Delegates of Appeals in Congregation and from them to the Delegates of Appeals in Convocation, with a final appeal to the King in Chancery. All this has been changed by an Order in Council of 23rd August, 1894, which enacts that in pursuance of the Supreme Court of Judicature Act, 1875, and the Statute Law Revision and Civil Procedure Act, 1883, the enactments and the rules of the Supreme Court relating to appeals from county courts shall apply to the Chancellor's court, commonly called the Vice-Chancellor's court, in the University of Oxford.

The court of the High Steward has been already mentioned. He has still nominally the right of holding a leet or view of frankpledge (*y*) (Statute

(*u*) This seems inconsistent with the 1636 statute (xvii, 2), under which the Chancellor is to hear and determine *controversias omnes circa causas civiles spirituales et criminales* affecting privileged persons. Nothing is said about a deputy, and the spiritual and criminal jurisdiction is without a doubt obsolete.

(*x*) Anstey, 460.

(*y*) Referred to as existing in the *Magdalen College Case* [1647], 1 Mod. 168. The clerks of the market are perhaps the last vestige of the leet jurisdiction. At Cambridge the leet seems to have existed a century later, as it is treated as existing in the litigation arising out of the contest for the High Stewardship in 1765. See Appendix.

xvii, 2), which he shares with the Chancellor (xvii, 1, 2). The Chancellor's court was a court of probate for resident members up to 1860. The probate jurisdiction was abolished by 23 & 24 Vict., c. 91. A coroner appointed by Convocation holds an inquest on the death of any resident member of the university where an inquest is necessary. This right is specially preserved by the proviso saving the rights of franchise coroners under the Coroners Act, 1887, s. 42. The jury should consist wholly or chiefly of matriculated persons.

The Cambridge court, also a court of record, differs in many particulars from that of Oxford, and the effect of its narrower jurisdiction is that the reported cases concerning it are fewer in number. The ordinary judge is the commissary. Its jurisdiction in civil matters is now confined to cases where both parties are privileged persons, not where there is only *una pars scholaris*, as at Oxford. But this was not always the case. For instance, the charter of 1588 gave jurisdiction *omnium placitorum personalium ubi persona sub privilegiis universitatis una pars erit* (*z*). And by Close Roll of Edw. III, fol. 30, indictments of stationers, writers, binders, and illuminators of books were to come before the Chancellor's court (*a*). No advocates for the parties were allowed under penalty of the party using one losing his case, unless for bad health

Much information as to the leet will be found in E. J. C. Hearnshaw, Leet Jurisdiction in England (1908).

(*z*) 1 Dyer, 88.

(*a*) Documents relating to the University and Colleges of Cambridge, 21.

or other legitimate cause (*b*). Consequently there are no proctors of the court, as at Oxford. This view of the court as a *forum domesticum* is still carried out by Stat. A, c. 8, of the existing university statutes in these words: "All causes and contentions which belong to the cognisance of the university shall be submitted to the judgment of the Chancellor or the commissary unless one of the litigants be a person having the degree of M.A., or some equal or higher degree, in which case the Chancellor shall have jurisdiction. They shall be determined with as little delay as possible and without the formalities of law." The only jurisdiction over non-members of the university appears to be over women of bad character (*c*). An appeal from a decision of the commissary lies to the Chancellor within six hours, from the Chancellor to the Senate within two days. There is no further appeal to the High Court of Justice as there is from the Oxford court.

The jurisdiction of the Chancellor's court is protected by the doctrine of conusance of pleas (*d*). The court being a franchise, its jurisdiction will be recognised by the High Court on the claim being

(*b*) *Statuta Antiqua*, 325.

(*c*) See the chapter on Discipline. The jurisdiction *inter extraneos* given by the statutes of 1570 *in nundinis Sturbrigiensibus et iis quae ad festum Sancti Johannis Baptistae apud Barnwell tenentur* seems obsolete.

(*d*) It is also called cognisance or *cognitio*, in criminal matters *significatio* or *notificatio*. Cognisance in this sense must be distinguished from cognisance in replevin. They have nothing but the name in common.

duly proved by evidence of charters and Acts of Parliament. On due proof, the case, if brought in any other court, will be remitted to the university court. Conusance is still competent, having been acknowledged by the King's Bench Division as lately as 1886 (*e*). At Cambridge the right is limited by 19 & 20 Vict., c. xvii, s. 18, which abolishes the right of the university to claim conusance of any action or criminal proceeding where any person who is not a member of the university is a party. The earliest recorded claim seems to have been made in 1367. At one time the claim was allowed in cases where it would not now be admitted. It lay at Oxford in the case of members of matriculated (*f*) guilds of tradesmen, of college servants, and of non-resident members of the university. Conusance may be claimed in four different ways: (1) by the King, (2) by the Chancellor, (3) by the Vice-Chancellor, (4) by the defendant. The King appears to claim by virtue of his invaded franchise (*g*). But as a matter of practice the second and third modes are the only

(*e*) *Ginnett* v. *Whittingham*, 16 Q. B. D., 761.

(*f*) The Chancellor of Oxford still has nominally authority to constitute *incorporationes artificum intra universitatis præcinctum* by the statutes of the university, xvii, 1, 2, 11. *Matricula* seems to be derived from *matrix*, and means a register. It is so used in the Theodosian Code. Its use in this sense is not unlike its use in Scotland, where it means the insertion of armorial bearings in the Register of the Lyon King of Arms, regulated by an Act of the Scottish Parliament of 1672.

(*g*) Such claim appears in one or two old cases, as in *Anon.* [1680], Litt., 304, where it was granted on the non-intromittant clause in the charter of 14 Hen. VIII.

ones now in use (*h*). It cannot be claimed in every case—for instance, where the Chancellor or Vice-Chancellor is sued, for that would make him judge in his own cause (*i*). It could not be claimed against the Exchequer when that was a separate Court (*k*), and possibly cannot be claimed even now where the question to be tried is a purely equitable one. To support the conusance a charter must be proved, it will not be presumed (*l*). The privileged person must show that he was privileged at the time of action brought, it is not enough to show that he was such at the time of claim of conusance (*m*). The Chancellor claims conusance at his peril. "If the Chancellor should certify falsely that a person is resident who is not, there is no doubt that an action upon the case would lie against him" (*n*). A good illustration of the working of the claim is afforded by a seventeenth century case. Plaintiff filed a bill to have a bond for £100 delivered up, the sum secured having been paid. Answer that the defendant was a Doctor of Law resident in Oxford. The Chancellor certified and demanded

(*h*) The form of claim by the Chancellor, the Marquess of Salisbury, will be found in *Ginnett* v. *Whittingham*, above, and a much more voluminous one in the older style by the Earl of Arran in *Welles* v. *Traherne* [1740], Willes, 241.

(*i*) Unless in trespass, *Chase's Case*, above.

(*k*) *Wilkins* v. *Shalcroft* [1662], Hardr., 188, the reason being that only the Justices of either Bench were named in the charters of exemption.

(*l*) Y. B., 40 Edw. III, 18, 8; Y. B., 18 Hen. VI, 18, 6.

(*m*) *Fryer* v. *Dew* [1628], Godb., 404.

(*n*) Lord Camden in *Hayes* v. *Long* [1766], 2 Wils., 310.

conusance. The court dismissed the bill (*o*). It has been already stated that a college may make the claim (*p*). Conusance of *significatio* need not necessarily be claimed; it is entirely at the discretion of the Vice-Chancellor or other person entitled to claim. There is a tendency at present to leave small cases to be tried by justices of the peace in the ordinary course.

Some of the authorities state that *Castle* v. *Lichfield* [1670], Hardr., 505, is the oldest reported case in which conusance was allowed. But the dates of other cases show that this must be erroneous. It was an *indebitatus assumpsit* for tobacco supplied and the claim was admitted.

(*o*) *Bushby* v. *Cross* [1670], 22 Vin. Abr., 8.
(*p*) *Magdalen College Case*, above.

CHAPTER IX

MISCELLANEOUS

(a) *Practice and Evidence*

WITH regard to procedure in the ordinary courts, the universities and colleges must sue and be sued in their corporate titles, but in the case of a college apparently not during the vacancy of the headship. During such vacancy certain other powers, especially any which need the use of the common seal, are in abeyance, unless the defect be met by the statutes. At common law a corporation can contract only by deed under the common seal, but in later times the strictness of this rule has been relaxed in the matter of contracts of small amount and of frequent occurrence. There is no doubt that a college through its bursar could make valid contracts for the supply of provisions, the repair of buildings, the hire of servants, and similar matters. As universities and colleges are charities, they fall under the ordinary rule that the administration of them and of any trusts of which they are trustees (*a*), being matters

(*a*) An early case is *A.-G.* v. *Balliol College* [1744], 9 Mod., 407 with regard to the Snell exhibitions. The person who is to execute a trust must be a person pointed out by the creator of the trust as a proper person to execute it. *Re Crunden & Meux's Contract*, L. R [1909], 1 Ch., 690.

of public interest, are to be inquired into by information by the Attorney-General at the relation of any person interested. In one case an information was filed against the Vice-Chancellor, the Warden of New College, for misconduct in his office (*b*). The procedure by mandamus is that which most frequently occurs in the reported cases. It lies where jurisdiction has been declined, of which many instances have been given in the previous pages. It may issue to a university, a visitor, or a college according to circumstances. Some of the cases are to restore a graduate deprived of his degrees, to affix the common seal (*c*), to grant a degree, to admit or restore a fellow or scholar, to admit a head (*d*), in one case to remove a Lollard from a scholarship (*e*). The mandamus might have been followed by feigned issue, when that mode of procedure existed (*f*). Proceedings by *scire facias* to repeal a charter or letters patent are still competent, but have been superseded by surrender. The Universities Committee of the Privy Council sits by delegation of the Crown in the matter of grants of new charters. Prohibition lies where jurisdiction has been exceeded, as by the Chancellor's court. In one case the right to a fellowship of Winchester was by consent tried by prohibition, it being doubtful

(*b*) *R.* v. *Purnell* [1748], 1 W. Bl., 87.

(*c*) *R.* v. *Cambridge University* [1765], 8 Burr., 1,047.

(*d*) As in *Patrick's Case* [1666], T. Raym., 101, where it went to the senior fellow of Queens'.

(*e*) T. Raym., 110.

(*f*) *Sandys* v. *Sandys* [1840], 1 Q. B., 816 (n).

who was visitor, and a mandamus thus not lying (*g*). In one case a writ of restitution was refused (*h*), but no doubt would have been granted in a proper case. Habeas Corpus lies for false imprisonment of a scholar (*i*) or of one of the public (*k*). The remedy by *quo warranto* is not competent to test the right of a fellow to his office (*l*). An injunction has been sometimes granted to prevent a college from taking a certain course. At least one famous case was tried on ejectment (*m*), and probably the modern action for the recovery of land would lie under similar circumstances. Distress as a remedy for withholding of the stipend of a fellowship is no longer in use. Fellowships are probably since recent changes not freehold offices but merely charges on the revenue of the college. Trespass or case would lie in certain cases. An action of contract would lie under the ordinary rules of contract where a college was a party (*n*). If the question as to the sufficient learning of a graduate in holy orders be raised, it must be by *duplex querela* in one of the

(*g*) Cited in *R.* v. *Bishop of Ely* [1750], 2 W. Bl., 58. Declaration in prohibition, a procedure occurring in some of the cases, is now obsolete.

(*h*) *Widdrington's Case* [1663], T. Raym., 81, 68. It is probable that *certiorari* would lie to remove the record from the Chancellor's court, but there appears to be no case on the subject.

(*i*) T. Raym., 110.

(*k*) *R.* v. *Eldon*, below. See also *Perrin* v. *West*, above.

(*l*) *Marriott* v. *Gregory* [1772], Lofft, 21.

(*m*) *Phillips* v. *Bury*, for which see Appendix.

(*n*) As in *Jones* v. *St. John's College, Oxford* [1871], L. R., 6 C. P., 115, a question of counter-signature by the bursar to a building contract.

provincial courts (*o*), it cannot be by *quare impedit*, a secular court being, as Lord Ellenborough said, unfitted to sit as a court of error upon matters of grammar (*p*).

Several questions of evidence have been decided by the courts, but some would probably not be considered binding at present. Possibly judicial notice of the common seal will be taken since 8 & 9 Vict., c. 113. But it is still necessary to prove, on any objection, that the seal was affixed with proper authority. Two cases of interest arose before the Act, and they may still be useful as guides. Both were actions of slander by Doctors of Medicine of St. Andrews against defendants who had alleged that the plaintiffs were unqualified. In the earlier case the production of the diploma of M.D. from St. Andrews University was held not to be sufficient evidence that the seal affixed was the seal of the university (*q*). In the later case the plaintiff produced evidence that the seal was the seal of the university and on that succeeded (*r*). In an anonymous case the King's Bench refused to act without an attested copy of the statutes of All Souls, on an application to the visitor to appoint as founder's kin fellow a candidate rejected by the college (*s*). It was the practice at King's for the proceedings of the Provost and fellows to be entered

(*o*) *Willis* v. *Bishop of Oxford*, above.
(*p*) *R.* v. *Archbishop of Canterbury* [1812], 15 East, 148.
(*q*) *Moises* v. *Thornton* [1799], 8 T. R., 303.
(*r*) *Collins* v. *Carnegie* [1834], 1 A. & E., 695.
(*s*) *Anon.* [1734], 2 Barnard, 437.

in the *Liber Protocollorum* signed by the registrar as a notary public. The book contained an entry of the expulsion of Mr. Bearblock from his fellowship by decision of the visitor, but the entry was not signed. Evidence was given that the handwriting of the entry was the same as that of the signed entries. The unsigned entry was held to be inadmissible (*t*). A testator made a gift of his library to Selwyn. The catalogue was a voluminous document, a copy of which would have entailed considerable expense. Probate was granted without requiring the catalogue to be brought into the registry, the college undertaking to hold it for the registry (*u*). Usage will be taken into consideration. So will the manner in which the donor of a trust fund conducted himself in the distribution of a trust fund (*x*). Inspection of corporation books will be allowed to an interested party provided that the evidence is required in a civil action (*y*), but not in a criminal prosecution (*z*).

At Oxford statutes of the university are printed or written in duplicate, one copy being deposited in the archives, one in the Bodleian Library, Stat. x, 2, 2. Probably either would be evidence.

(*t*) *Fox* v. *Bearblock* [1881], 17 Ch. D., 429.

(*u*) *In the goods of Balme* [1897], P. 261.

(*x*) *A.-G.* v. *Brasenose College* [1884], 2 C. & F., 295, the case of Nowell, Dean of St. Paul's, and Middleton School; *A.-G. for Ireland* v. *Bishop of Limerick* [1870], I. R. 5 Eq., 403.

(*y*) Grant, 311.

(*z*) *R.* v. *Purnell*, Appendix.

(b) *Differences between Oxford and Cambridge*

Several of these have already been noticed, but it may be useful to give a short summary in this place.

(1) A hall is a corporation at Cambridge, but not at Oxford. Trinity Hall is as fully a corporation as Trinity College, and the same was the case with Clare, Pembroke, and St. Catharine's when they were called halls. Selwyn is technically a hostel and corresponds very nearly to the Oxford private halls, such as Marcon's.

(2) The government and discipline differ both in names and functions. The Oxford names of Congregation (in the Oxford sense), Delegacy, Board of Faculty, Visitatorial Board, are unknown at Cambridge; Syndicate (*a*), Senate, Sex Viri, are equally unknown at Oxford. The rights of jurisdiction over bad characters have had a different growth in the two universities. The powers and tenure of office of the Vice-Chancellor are not the same.

(3) The procedure in the Chancellors' courts is not the same, and the right of conusance is more restricted at Cambridge.

(4) The degrees differ, especially the law degrees. D.C.L. and B.C.L. are peculiar to Oxford; LL.D., LL.M., and LL.B. to Cambridge. A smaller difference is the variety of caps and gowns at Cambridge, which also has no distinctive scholars' gowns, as at Oxford.

(*a*) The term "syndic" is adopted from Paris, where there was a *syndicus* or *procurator ad litem*.

(5) The position of both heads and tutors differs considerably in the two universities. Nor has Cambridge gone as far as Oxford in attaching professorships to colleges.

(c) *Acts of Parliament affecting Colleges*

Some of these have already been noticed, but there are many in addition. 27 Hen. VIII, c. 42, s. 7, seems to be the earliest. It enacted that Durham College, Oxford (now Trinity), might take advantage of the Act, which relieved the colleges from the payment of first fruits and tenths. 18 Eliz., c. 6, contained provisions for leases made by Magdalen and St. John's, Oxford. 13 Anne, c. 6, annexed canonries to the headship of Oriel (*b*) and Pembroke, Oxford, and St. Catharine's. C. 17 gave to Brasenose the presentation to churches at Stepney. 3 & 4 Vict., c. 113, detached the canonry of Worcester from the Margaret Professorship of Divinity at Oxford, and made him a canon of Christ Church instead. The Cambridge Act of 1856 provided for Trinity scholarships, Grindal fellows and scholars at Pembroke, and similar matters. The Act of 1877 dealt with, *inter alia*, the Snell and Hulme exhibitions and the Dixie foundation of Emmanuel. 30 & 31 Vict., c. 76, enabled a new ordinance to be made for Christ Church in substitution for previous ordinances. Hertford,

(*b*) The canonry was dissevered from the headship by the Act of 1877, and is now attached to the Oriel Professorship of Exegesis. Canonries attached to professorships also exist at Christ Church, El , and Durham.

dissolved by 56 Geo. III, c. 136 (*c*), was reconstituted by the Hertford College Act, 1874 (37 & 38 Vict., c. 55). Private Acts are numerous. Among others may be named 46 Geo. III, c. cxlvii, enabling the Warden of Wadham to marry; 35 & 36 Vict., c. cliv, as to scholarships at St. John's, Oxford; 58 & 59 Vict., c. lxxxiv, as to sale of Downing College lands; and 7 Edw. VII, c. cx, as to the Hulme trust estates.

(d) *The Undergraduate.*

Some cases on this subject will be found in the Appendix. The college has a discretion as to whom it will admit, and a sentence of rustication or expulsion cannot be appealed against except by those on the foundation, or elected to be on the foundation, who have an appeal to the visitor. In an indictment for assault on a pensioner of Queen's by turning him out of the college garden, the production of a sentence of expulsion by the college was regarded as a conclusive defence (*d*). The question that most often arises is that of necessaries supplied to an undergraduate under twenty-one. Necessaries are defined by sect. 2 of the Sale of Goods Act, 1893, as "goods suitable

(*c*) After it had practically ceased to exist in 1805 owing to the failure of the college to elect new fellows on vacancies. See Co. Litt., 13 b; *Dean of Windsor* v. *Webb* [1614], Godb., 211. Any leases made by the extinct corporation are determined, and where it is a lessee the reversion accelerates and the land reverts to the lessor, *Hastings Corporation* v. *Letton*, L. R. [1908], 1 K. B., 878.

(*d*) *R.* v. *Grundon* [1775], Cowp., 315. No reasons need be given, but it seems probable that if reasons be given they should be good ones. In *Fitzgerald* v. *Northcote* [1865], 4 F. & F., 656, the plaintiff was expelled from Oscott College for an alleged breach of discipline which the jury found had not occurred, and he obtained damages.

to the condition in life of such infant . . . and to his actual requirements at the time of delivery." This is in accordance with a judgment of the Court of Exchequer, except that the court went further, and held that necessaries supplied to a Cambridge undergraduate are not such things as are requisite for bare subsistence. Jewellery to the value of £8 was allowed (*e*). In another case of the same year an action was brought against an Oxford undergraduate for the hire of hunters. The jury found for the livery stable keeper, but the Common Pleas granted a new trial (*f*). Dinners supplied to an undergraduate in lodgings are not *primâ facie* necessaries (*g*). The latest case on the subject was an action brought by a tailor for goods supplied while the defendant was an undergraduate of Trinity, Cambridge. The bill included eleven fancy waistcoats at £2 2*s*. each. The Court of Appeal held that the onus was on the plaintiff to prove not only that the goods were suitable to the condition in life of the infant, but that he was not sufficiently supplied with goods of that class. Judgment was entered for the defendant (*h*). Education is a necessary (*i*).

(*e*) *Peters* v. *Fleming* [1840], 6 M. & W., 42.

(*f*) *Harrison* v. *Fane* [1840], 1 M. & G., 550.

(*g*) *Brooker* v. *Scott* [1844], 11 M. & W., 67. Presumably because, if not a non-collegiate student, he would find dinner provided for him in the college hall.

(*h*) *Nash* v. *Inman*, L. R. [1908], 2 K. B., 1. This is quite in accordance with *Foster* v. *Redgrave* [1867], L. R., 4 Ex., 85 (n), the case of an Oxford undergraduate and his tailor.

(*i*) *Pickering* v. *Gunning* [1628], Sir W. Jones, 182; Phillimore, J., in *Collins* v. *Cory*, "Times," 5 Feb., 1901.

This would include matters subsidiary to the main purpose of education, such as books for the schools, payment of battels, rent of lodgings, and drawing the necessary cheques. Where necessaries are bought the infant must, by the section of the Sale of Goods Act already cited, "pay a reasonable price therefor." But he cannot give a bill of exchange for them (*k*). At common law a contract by an infant was voidable and might have been repudiated or ratified on the infant coming of age, and 9 Geo. IV, c. 14, enacted that ratification must be in writing. But the whole law was altered by the Infants' Relief Act, 1874, since which any contract entered into by an infant (other than for necessaries) shall be absolutely void, and no action lies against him upon ratification made after full age. A contract for payment of a loan made during infancy is also avoided by the Betting and Loans (Infants) Act, 1892. For torts the infant is liable. *Ginnett* v. *Whittingham*, above, is good authority for this. There was no doubt as to his liability, the only point was whether conusance lay. But the tort must be independent of contract, and a contractual liability cannot be got rid of by framing the action in tort (*l*). The infant may be liable for an independent tortious act which he was expressly forbidden to do by the other party to the contract. In the leading case on the subject an undergraduate of Trinity, Cambridge, hired a horse, the owner expressly stipulating that it should not be

(*k*) *Re Soltykoff*, L. R. [1891], 1 Q. B., 413.
(*l*) *Jennings* v. *Rundall* [1799], 8 T. R., 335.

used for jumping, and the Trinity man only paid the amount charged for a horse not expected to jump. The defendant lent it to a friend who jumped the horse and staked it. It was held that the defendant was liable. "There has been an actionable wrong," said Erle, C.J., "for which the defendant is liable, independently of the finding of the jury that the hiring of the horse was a necessary suitable to the degree and station in life of this young man"(*m*). Representation by an infant that he is of age apparently does not allow him afterwards to insist on his absence of capacity to contract (*n*). But it seems doubtful whether if he represent himself as agent when he is not, he would be liable to an action for breach of warranty of authority, an action of tort. The case might be illustrated by a man under twenty-one opening an account at an Oxford bank and falsely declaring to the manager that he had his father's authority to do so. The father would not be liable on an overdraft. Would the son be, unless indeed the cheques were for necessaries? An undergraduate, besides making himself liable for education, might enter into a valid contract for tuition to others or for the post of assistant-master in a school,

(*m*) *Burnard* v. *Haggis* [1863], 14 C. B., N. S., 45.

(*n*) This seems to be the effect of such cases as *Mills* v. *Fox* [1887], 37 Ch. D., 153. At common law, before the Judicature Acts, there was no liability on such representation, *Stikeman* v. *Dawson* [1847], 16 L. J. Ch., 205. Roman law allowed liability of the minor where he became *locupletior*, Dig. iv, 3, 1, 18. In *Woolf* v. *Woolf* [1899], 1 Ch., 848, an injunction was granted, and the infant had to pay costs.

if the terms be fair and reasonable and not manifestly to his disadvantage (*o*). Protection from betting circulars and similar temptations is afforded to minors by the Betting and Loans (Infants) Act, 1892. Under the provisions of this Act the sending of any such circular to any person at any university, college, school, or other place of education, where such person is an infant, is guilty of a misdemeanour, and the sender shall be deemed to have known that such person was an infant, unless he proves that he had reasonable ground for believing such person to be of full age. There is probably an implied contract that a university or college supplies efficient tuition. An action would lie by an undergraduate—by his next friend should he be an infant—for breach of the contract to educate (*p*). A member of a college is bound to conform to reasonable rules of discipline, and if he do not do so, the contract to educate is not broken. In a recent case a Cambridge undergraduate was expelled for refusal to go to chapel. He brought an action for breach of contract to educate. The college set up the Statute of Frauds as a defence of the alleged contract, also that by 56 & 57 Vict., c. 61, s. 1 (*q*), more than six months had elapsed since the act complained of. On the trial at Herts Assizes, Wills, J., directed judgment for the college on the ground that the relation of an undergraduate

(*o*) See cases in Anson, Law of Contract, pt. ii, c. iii, s. 2.

(*p*) This was one of the grounds of action in the well-known Halleybury case, *Hutt* v. *Governors of Haileybury College* [1898], 4 "Times" L. R., 623, as well as in the following case.

(*q*) The Public Officers' Protection Act, 1893.

to his college was in matters of discipline not a contractual one (*r*). Even if over twenty-one years of age the undergraduate has no borough vote for Oxford or Cambridge, whether he reside in college or in lodgings (*s*). The only exception is to be found in scholars of Trinity College, Dublin. The undergraduate is liable to the criminal law like any other subject, the only difference being that in some cases he is amenable to a special tribunal. At the same time he cannot create a crime by persuading a companion of the other sex to walk with him (*t*).

Modern Universities

The law as to these is less interesting; it is mainly statutory, and there are few reported decisions. In most cases the Crown is visitor and nominates the first Chancellor, subsequent holders of the office being elected by the university (*u*). The Medical

(*r*) *Green* v. *Peterhouse*, "Times," 10 Feb., 1896. The contract to educate might also be broken should an undergraduate be expelled or sent down for a definite time without being heard in his defence. Unless indeed it be one of the rules of discipline, as it is in many colleges, that failure to pass university examinations in a given time means withdrawal from the college.

(*s*) See cases in Appendix.

(*t*) As was held in the famous case of *R.* v. *Hopkins*, already noticed.

(*u*) Unlike Oxford and Cambridge the modern universities, except Durham, receive subventions from the State. In the Appropriation Act, 1908, appears the item, "for grants in aid of the expenses of certain universities and colleges in Great Britain and of the expenses under the Welsh Intermediate Education Act, 1889, £221,800." The part of this granted to the English Universities varies from year. See Parliamentary Paper, 1909, [192], containing a Treasury minute recommending an aggregate sum good for a quinquennium.

W.U.

Acts and the exemptions from the Mortmain Acts generally apply, but, except for Durham, not the Universities and College Estates Acts.

Durham has had a long history. In the fourteenth century Thomas of Hatfield, Bishop of Durham, founded Durham College for eight monks and seven students at Oxford. It was practically a cell of Durham Abbey. In 1657 Cromwell founded a university, P. Hunton being the Provost, but recalled the grant on petition from Oxford and Cambridge. Durham College, Oxford, now represented by Trinity, was dissolved in 1548, and the proceeds granted to the Dean and Chapter. The present university was founded by royal charter, confirmed by 2 & 3 Will. IV, c. xix, and followed by an order in council of 1837, under the name of "The Warden, Masters, and Scholars of the University of Durham." The bishop was visitor and the dean Warden. There was a reconstitution by the Durham University Act, 1861, and ordinances framed under that Act were approved by order in council in 1862. Finally, the University of Durham Act, 1908 (8 Edw. VII, c. 20), again reconstituted the university. The bishop remains visitor, the dean ceases to be Warden and becomes *ex officio* Chancellor, the corporate name of the university being altered accordingly. There is a Senate and Convocation and a Council of the Durham Colleges. The canonries annexed to the professorships of divinity and Greek remain so annexed and appointments to them are made by the visitor. The Newcastle division of the university

consists of the Durham College of Medicine and the Armstrong College. Commissioners are appointed by the Act to frame statutes. Resident members of the university are exempt from service in the militia by 15 & 16 Vict., c. 50, s. 61. The Universities and College Estates Acts, the University Tests Act, and the Mortmain Acts include Durham. There appear to have been no judicial decisions affecting Durham specially (*x*). The Municipal Corporations Act, 1882, s. 257, enacts that nothing in the Act is to affect the rights or privileges granted by charter or Act of Parliament to the University of Durham.

London was incorporated by letters patent in 1836. A subsequent charter was granted in 1863, and a supplemental charter in 1878, enabling women to graduate. The university was reconstituted by the University of London Act, 1898 (61 & 62 Vict., c. 62, amended 1899), which appointed a commission to make statutes and regulations in accordance with the report on the proposed Gresham university and with the schedule to the Act. It is within the exceptions to the Mortmain Acts. The governing bodies are the Senate (with three standing committees) and Convocation. The King is visitor. 15 & 16 Vict., c. 60, s. 21, exemptions from service in the militia are given to members of the senate and examiners, professors, tutors, and lecturers, also to students duly matriculated and actually receiving education. Medical graduates were put

(*x*) See J. T. Fowler, Durham University (1904).

in the same position as medical graduates of Oxford and Cambridge by 17 & 18 Vict., c. 114, and 36 & 37 Vict., c. 55. One member of Parliament was allotted to the university by the Representation of the People Act, 1867, and elections are not subject to the Ballot Act, 1872. Two reported cases affecting the university will be found in the Appendix. Some private Acts deal with the constituent colleges, *e.g.*, 2 Edw. VII, c. xcii as to King's college; 5 Edw. VII, c. xci as to University College.

The Victoria University was founded by charter in 1880. By the Victoria University Act, 1888, graduates of the university having the qualifying degree are entitled to any office, privilege, or exemption given by Act of Parliament or public authority to graduates of Oxford, Cambridge, and London. The federal system after lasting over twenty years was not successful, and the Privy Council after hearing evidence approved of the grant of separate charters to the three constituent colleges.

Victoria University of Manchester kept the old name with the addition of the name of the city. There is no public Act subsequent to the Act of 1888, but by 3 Edw. VII, c. xiii (1904), the Victoria University has been put in the same position as to gifts in mortmain as the older universities. It has also been enabled by supplemental charters to admit women to degrees and to assume disciplinary powers over delinquent graduates. This has been generally followed in the charters and Acts

constituting the newer universities. The buildings of the Owens College are not rateable, as the trustees are under a statutory incapacity to let the premises at a rent (*y*).

Leeds merged the previous University College of Leeds in itself by 3 Edw. VII, c. xxxv. By the Leeds University Act, 1904, wherever any office is open to graduates of Oxford, Cambridge, London, and the Victoria University of Manchester, or wherever any privilege or exemption has been or shall be given by any Act of Parliament or regulation of a public authority to graduates of those universities, graduates of Leeds having the qualifying degree may hold any such office and be entitled to such privilege.

Liverpool merged the University College of Liverpool by 3 Edw. VII, c. ccxxxii. Provisions similar to those of the Leeds University Act were contained in the University Liverpool Act, 1904.

Wales (*Prifysgol Cymru*) obtained its charter in 1893. Provisions similar to those of the Leeds Act were contained in the University of Wales Act, 1902. Some private Acts deal with constituent colleges of the university, now the only federal university remaining. An example is the Bangor Corporation Act, 1903 (3 Edw. VII, c. ccxlii), as to the site of the North Wales College at Bangor. It has recently been held that the property of the North Wales

(*y*) *Owens College* v. *Chorlton*, [1887], 18 Q. B. D., 408. For the history of the college see I. Thompson, The Owens College (1886). Acts regulating it were passed in 1870, 1871, and 1899.

College is not liable for income tax, as it is occupied for charitable purposes under the Income Tax Act, 1842 (*z*). The King is "Protector" of the university, presumably the same thing as visitor, the Prince of Wales is Chancellor. What has already been said as to educational endowments under the Endowed Schools Acts must be read subject to the provisions of the Welsh Intermediate Education Act, 1889. The Act does not name universities or colleges. The Welsh charter is said to contain the most complete provision of any as to women's education and graduation (*a*).

Birmingham is mainly regulated by the Birmingham University Act, 1900 (63 & 64 Vict., c. xix), repealing the Mason University College Act, 1897.

Sheffield obtained its charter and Act in the same year, an example of unusual celerity. The Act is the University of Sheffield Act, 1905 (5 Edw. VII, c. 152). *Bristol* obtained a charter in 1909.

In all these universities new statutes must as a rule be approved by order in council, as at Oxford and Cambridge. An example is the statute establishing a faculty of law at Sheffield in 1908. It is generally provided that statutes or ordinances are not to be repugnant to the laws of the realm or the general objects of the charters. A charter is to be

(*z*) *R.* v. *Commissioners of Income Tax*, [1908], W. N., 92, affirmed [1909], W. N., 57.

(*a*) W. C. Davis and W. L. Jones, Hist. of the University of Wales (1905).

construed beneficially for the university. Sometimes, as by the Victoria University Act, 1904, preference is given, in case of inadequacy of accommodation at the university, to children of parents residing in the university town. The modern universities differ from Oxford and Cambridge in having on the Court a large representation of local public authorities. The Court is the ultimate governing body and directs the custody and use of the common seal. Convocation consists of graduates, sometimes of M.A. or superior degree, sometimes including those of B.A. degree only. The Senate generally regulates education, subject to review by the Court. The Council is a comparatively small executive body which drafts statutes and ordinances. Such is the general constitution of modern universities, but it is not universal, for Durham and London have no Courts.

APPENDIX OF CASES

With this selection in addition to those noticed in the text, it is hoped that few cases of importance have been overlooked. Occasionally a case to which a college is party has nothing to do with university law. Such cases have not been inserted. Examples are *The Lincoln College Case*, [1595], 3 Rep. 59; *Emmanuel College* v. *Evans*, [1625], Rep. in Ch., 10; *Clare Hall* v. *Harding*, [1848], 17 L. J., Ch., 301. The American cases will be interesting as touching some problems which have not yet risen on this side of the Atlantic.

Redvers v. *Bardolf*, [1292], Y. B. 20 Edw. I, 296 (Rolls Series). Action of replevin. Avowry of taking to be good on ground that Bardolf had a leet and Redvers was resident within the precinct of the leet, and that he was in a decennary and was amerced and distrained for the amercement. Redvers claimed that he ought not to be in a decennary, for that he was a clerk *conversant a les ecoles*. He produced a letter of the Bishop of Ely and of the Chancellor of Cambridge (*Canturbure*), testifying this. Amercement annulled and damages for distress awarded.

Chase's Case, [1430], Y. B. 8 Hen. VI, 18, 7. Writ of trespass against Thomas Chase of Oxford for goods seized. Defence that King Henry IV by letters patent granted to the Chancellor of Oxford and his successors that they should not be impleaded by any writ of oyer and terminer or trespass or contract by reason of his office within the town of Oxford. The Chancellor or his commissary may by the letters patent be judge himself (*son juge demesne*) in trespass.

Henry VI in 1442 granted to Corpus, Oxford, discharge from toll and pontage all over England. This was held to be a good grant, 2 Roll. Abr., 198 (*a*).

Corpus Christi, Cambridge, Case, [1561], Dal. 31. If a master of a college devise lands to the college it cannot take,

(*a*) The report says Corpus, Oxford, not founded till 1516. Probably Corpus, Cambridge, or Benet, founded 1352, must be meant.

because at the moment of his death it is incomplete and acephalous. This decision, though supported by Littleton, s. 448, would probably not be followed at the present day. Even were it still good law, the difficulty might be evaded to a devise to trustees for the benefit of the college and any future master.

Dean of Christ Church v. *Parott*, [1578], 4 Leon., 190. If the King grant lands to a corporation by another name than that by which they were named before, the lands shall pass and the letters patent shall be to them a new incorporation.

A.-G. v. *Margaret Professor*, [1682], 1 Vern., 55. A testator devised fifty pounds a year for a lecturer in polemical or casuistical divinity, so as he be a bachelor or doctor in divinity and fifty years of age and would read five lectures in every term. Cambridge, the heir-at-law consenting, would have had the conditions reformed so as to admit a lecturer forty years of age and three lectures a term. The Lord Chancellor, although there was no opposition, refused to sanction the proposed alteration in the terms of the will.

Alban Francis' Case, [1687], 11 St. Tr., 1315. Francis was a Benedictine monk, whom the Vice-Chancellor of Cambridge refused to admit to the degree of M.A. without the oaths, in accordance with the King's letters under the sign-manual. The Ecclesiastical Commission deprived the Vice-Chancellor, the Master of Magdalene, of his degrees (*b*).

Magdalen College Case, [1687], 12 St. Tr., 1. The vice-president and fellows were twice cited before the Ecclesiastical Commission to show why (1) they had not elected Anthony Farmer President in accordance with the King's mandate; (2) they had not elected the Bishop of Oxford in accordance with a second mandate. Farmer was disqualified by reason of his immoral life and his not having been fellow of Magdalen or New College. John Hough was elected in his stead and admitted by the Bishop of Winchester as visitor. On that the King by two mandates, one to the college, the other to the Ecclesiastical Commission as visitors of the university, appointed the Bishop of Oxford President, and the fellows submitted "as far as is lawful and agreeable to the statutes of the said college." The Commission on November 16, deprived twenty-five fellows of their offices, and on December 10, declared Hough and twenty-six fellows incapable of promotion to any ecclesiastical dignity or benefice. The deprived fellows were restored on October 11, 1688 (*c*).

(*b*) A special report of the case was published in 1889.
(*c*) There is a large amount of literature dealing with this famous

Phillips v. *Bury*, [1694], 1 Mod., 106. This was an action of ejectment for the Rector's lodgings at Exeter. The defendant, the Rector, who had been appointed in 1666—chiefly on the strength of a letter from Charles II—had deprived Colmer, a fellow, for immorality. Colmer appealed to the visitor, Bishop Trelawney, well known as one of the Seven Bishops. The visitor sent his chancellor to restore Colmer. He was refused admittance. The visitor then appointed a visitation after notice, but the college gates were closed against him. The Rector was then deprived for contumacy by the visitor. The case went up to the House of Lords, and was decided in favour of the plaintiff on the ground that the decision of a visitor is a judgment *in rem* and conclusive, and that the office of visitor necessarily carries with it the power of deprivation. Such power the founder could not restrain, he having created the Bishop of Exeter and his successors visitors (*d*).

Tremain's Case, [1719], 1 Str., 167. Being an infant he went to Oxford contrary to the order of his guardian, who would have him go to Cambridge; and the Court sent a messenger to carry him from Oxford to Cambridge. And upon his returning to Oxford there went another *tam* to carry him to Cambridge *quam* to keep him there (*e*).

case. N. Johnston, M.D., was a strong supporter of the royal claim in The King's Visitatorial Power asserted (1688). C. Aldworth, the vice-president, naturally took the other side in An Impartial Relation of the whole Proceedings against St. Mary Magdalen College in Oxon. (1688). There are other books on the question by Sir C. Hedges, T. Cartwright, Bishop of Chester, a member of the Commission, and others. The authorities will be found in J. R. Bloxam, Magdalen College and James II (1886).

A similar case had occurred a century earlier at Corpus, Oxford. In 1568 the Queen sent a mandate to the visitor to admit Cole President. This was obeyed after the expulsion of the offending fellows, 1 Wood, 290. Two fellows were also expelled at Magdalen a generation later, but by the President and fellows, not the visitor. The proceedings took place in 1730. The minor poet, Dr. Thomas Lisle, fellow and bursar, was with some of his colleagues accused of "blasphemy and other vile practices, but he was acquitted."

(*d*) This case caused great excitement at the time. One proof of this is the unusual number of reports in which it appears. In addition to Mod. it will be found in Cases in Parl., 35; Skinner, 447; 1 Salk., 400; Carth., 180; 2 T. R. 236. A longer description of the proceedings is given in The Case of Exeter College in the University of Oxford related and vindicated (1691), by the date before the House of Lords' decision, and in C. W. Boase, *Registrum Collegii Exoniensis* (1894), p. cxxix. The name appears in some reports as Berry or Bery.

(*e*) Compare a similar case thirty years later, where the Court of

Dr. Bentley's Case, [1713–1736]. There were numerous stages in this case, probably the most celebrated of all the university cases. In 1713 a mandamus went to the Bishop of Ely as visitor of Trinity, Cambridge, to compel him to discharge his functions as visitor, the question being whether Bentley as Master of Trinity had rightly suspended Dr. Miller from his fellowship. In 1714 the case was heard before the visitor, but his death put an end to the proceedings. In 1718 Bentley was deprived of his degrees by the Chancellor's court for contumacy in not appearing to a suit brought against him by Conyers Middleton, the author of the life of Cicero. A rule for a mandamus to restore the degrees was granted by the King's Bench in 1723 on the ground that the university had made no return of a visitor, and that Bentley had not been heard in his own defence (*f*). In 1724 the same result followed on the argument of a peremptory mandamus. The ground of decision was that, as it was not shown that the proceedings in the Chancellor's court and in Congregation were according to civil law, they must be presumed to have been according to common law and had violated the principles of justice at common law (*g*). On a question arising whether by the statutes of Trinity the Crown or the bishop were visitor, it was decided on the construction of two inconsistent codes of statutes that the Crown was general and the bishop special or local visitor, and that the latter had power to deprive for delinquency as Master. Bentley then declared in prohibition against the bishop, and in 1732 the House of Lords decided against him. The judgment laid down that visitors are not to be tied to any particular forms, or to be prohibited for irregularity in their proceedings or informality in their acts, but only for want of jurisdiction. The visitor had cited Bentley as special visitor and had afterwards, in a plea to the prohibition, insisted on his right as general visitor. The variance was held not to avoid the plea, as in one character or another the bishop possessed jurisdiction (*g*). In accordance with this judgment the bishop, in 1733, proceeded to try Bentley, and in 1734 deprived him of his office as Master for breach of the college statutes and for misuse of college property. The articles of accusation were very numerous. One of them, to be found in Brown, was an allegation that Bentley allowed his son Richard to present himself

Chancery compelled a boy to return to Eton according to the wishes of his guardian, the boy having no complaint against the head master of Eton, *Hall* v. *Hall*, [1749], 8 Atk., 721.

(*f*) *R.* v. *Cambridge University*, 2 Str., 1157.

(*g*) *Bishop of Ely* v. *Bentley*, 2 Bro. P.C., 220.

as a candidate and be elected fellow of Trinity, although he was a graduate of St. John's and so ineligible under the Trinity statutes. But Bentley after all these vicissitudes triumphed once more. The vice-master refused to act on the visitor's judgment, and in 1736 Lord Hardwicke refused to issue a mandamus to force him to do so, at the same time declining to determine the old question who was general visitor (*h*).

A.-G. v. *Stephens*, [1737], 2 Abr. Cas. Eq., 196. The trustees of the Radcliffe Travelling Fellowships, founded only twenty-two years earlier, were empowered to dispense the defendant from his obligation to travel.

R. v. *Purnell*, [1748], 1 W. Bl., 37. This was an information in the King's Bench against the Vice-Chancellor (the Warden of New College), for neglect of the duties of his office as Vice-Chancellor and magistrate for Oxfordshire, in not punishing two undergraduates for treasonable words spoken in the streets at Oxford (*i*). The report, however, says that they were punished in his court, but apparently insufficiently. The King's Bench did not err on the side of insufficiency, but passed a sentence almost brutal, when the age of the culprits is considered. The sentence was a heavy fine and two years' imprisonment, with the additional degradation of being conducted through all the courts at Westminster with a paper on their foreheads setting forth their crime. The information against Dr. Purnell was dismissed on the ground that the King's Bench had no power to order inspection of the statutes and archives of the university so as to inform itself what the duties of the Vice-Chancellor were, as such inspection would have tended to make the defendant criminate himself. Sir W. Blackstone, in his note, states that this was probably an expedient for putting the question by, as it would have been easy to call on the registrar of the university to produce the documents (*k*). In a civil case, the documents required being of a public nature, could have been proved by examined copies. The case appears to be an

(*h*) *Dr. Walker's Case*, Cas. temp. Hardwicke, 212. For further information, books and pamphlets of the time may be consulted, especially Dr. Colbatch's Vindication of the Bishop of Ely's Visitatorial Jurisdiction (1732). More modern works are De Quincey's Study, vol. vii, p. 85, of the edition of 1857; Monk, Life of Bentley (1853); Sir R. C. Jebb, Life of Bentley (1882).

(*i*) See *R.* v. *Whitmore and Dawes*, the case immediately preceding. The treasonable words have not been recorded.

(*k*) In spite of the great jurist's opinion, the registrar would not have brought the archives. They would have been in the custody of the keeper of the archives, an office created in 1634.

authority that one of the ordinary tribunals may supplement a punishment inflicted by a university court.

St. John's College, Cambridge v. *Todington*, [1757], 1 Burr., 158. A rule for a prohibition was obtained by the college against proceedings by a rejected candidate for a fellowship on the ground that the Bishop of Ely was not general visitor, so as to determine the validity of an election to a fellowship on a new foundation. The rule was discharged by the King's Bench, it being held that new fellowships ingrafted must be subject to the jurisdiction and discipline exercised over the original foundation. This decision has been substantially followed in some subsequent cases and solved the point left undecided in a Clare Hall case in the preceding century (*l*).

Spencer v. *All Souls College*, [1762], Wilmot, Opinions and Judgments, 163. The Archbishop of Canterbury as visitor, with Wilmot, C.J., and Dr. Hay as assessors, held, on the wording of the college statutes, that the founder intended to give a preference to his blood *ad infinitum*, and that candidates for fellowships, as remote as fourteen degrees of consanguinity from the founder, were entitled to preference. After this decision consanguinity was reckoned by B. Buckler's *Stemmata Chicheleana* (Oxford, 1764, Supplement, 1775). In 1777 Archbishop Cornwallis granted an injunction by which no preference to founder's kin was given as long as ten fellows of founder's kin remained in the college (*m*). Blackstone, himself a fellow of All Souls, in his Essay on Collateral Consanguinity (1750), objects to relationship being traced further than the Statutes of Distribution allow, criticising a similar judgment of Lord Keeper Bromley as to the college. There were cases both at All Souls and other colleges of alleged unscrupulous forgery of pedigrees, some of which will be found in the various college histories (*n*).

R. v. *Vice-Chancellor of Cambridge*, [1765], 4 Burr., 1647. There was a contest for the office of High Steward between the Earls of Hardwicke and Sandwich. A grace in favour of the former passed the *Caput*, and in the House of Regents the voting was equal. The Vice-Chancellor dissolved the House. One vote was afterwards found to be bad. If it were disallowed, Lord

(*l*) *Jennings' Case*, [1699], 5 Mod. 422.

(*m*) Report of Commission, 1852, p. 329. The old supposed restriction on All Souls fellows that they should be *bene nati, splendide vestiti, et mediocriter docti* has no foundation in fact. The qualification in the original statutes is *in plano cantu computeator eruditi*.

(*n*) One appears to have happened at New College as lately as 1829.

Hardwicke was in a majority of one. A mandamus lay to the Vice-Chancellor to summon a new House and affix the common seal to the diploma appointing Lord Hardwicke.

Winchester College Case, [1767], Cases in Law and Equity, 113. Exhibitions were founded for the benefit of four of the testator's kin of the name of Hodson, charged on an estate in Hants, and tenable at any grammar school or university. Accounts were to be rendered every three years. Interest was allowed by the court on a sum unpaid after the lapse of one of the periods of three years.

A.-G. v. *Downing*, [1767], Wilmot, Opinions and Judgments, 1. Sir J. Downing by his will made in 1717 devised all his lands to trustees to certain relations, and in default of such relations and their issue, to purchase a site at Cambridge and build a college on it to be called Downing College and to sue for a charter for such college. The testator died in 1749, the trustees having predeceased him. An information was filed at the relation of the university against the heirs-at-law of the devisees and heirs-at-law of the testator in order to have the trusts of the will executed. Judgment was given in favour of carrying out the terms of the will as a charitable trust, in case the King should be pleased to grant a charter for the proposed college and a licence in mortmain for it to accept the devised estates. The principal objection to the validity of the devise was that it was made to a body not in being and that it depended on the consent of the King and the university whether such a body would ever come into existence. To this it was answered by the court that the devise to a possible future corporation must depend on the same rules as those governing a devise to an individual not yet in being. The fact of the trustees having predeceased the testator did not prevent the court from carrying out the charitable intent of the testator by the appointment of new trustees for the purpose of applying for a charter. There was considerable further litigation (*o*), and finally a charter was granted in 1800.

R. v. *Chancellor of Cambridge*, [1794], 6 T. R., 89. The publication by a resident fellow of Jesus of a pamphlet against the Church of England is an offence against the statutes of the university and renders the writer punishable by banishment by the Vice-Chancellor and the heads of houses in the Chancellor's Court. A mandamus to restore him was refused, although his college had taken no action against him.

(o) The most interesting case was *A.-G.* v. *Bowker*, [1798], 3 Ves., 718a, where the court rejected the argument that there were quite enough colleges at Cambridge.

A.-G. v. *Andrew*, [1798], 3 Ves., 633; *Andrew* v. *Merchant Taylors' Company*, [1802], 7 Ves., 223. A testator bequeathed a sum of money for the endowment of scholarships at Trinity Hall. On that college refusing the gift the court ordered it to be transferred to St. John's, Oxford, on the principle of cy-près, the scholarships being for the benefit of Merchant Taylors' school and St. John's being closely connected with that school. At a later stage of the proceedings (*Andrew* v. *Trinity Hall*, [1804], 9 Ves., 525), it was held that a college may accept one benefit under a will and disclaim another, and that the court has no jurisdiction to force the whole gift on an unwilling recipient.

Curtis v. *Hutton*, [1808], 14 Ves., 537. Hutton by his will left certain lands in England for an establishment for students in the King's College of Old Aberdeen. It was held that the gift, being of land in England, was void by the Mortmain Act of 9 Geo. II, c. 36, even though it were in favour of a charity in a country where devises of real estate for charitable purposes were not forbidden. Under the Mortmain Act, 1891, such a devise would no doubt be valid. A legacy to be laid out in land in Scotland for a Scottish educational purpose was held to be good the year after the Hutton case (*n*).

Brown v. *Renouard*, [1810], 12 East., 12. Conusance was allowed in a claim by the Vice-Chancellor of Cambridge in action against a fellow of Sidney for trespass. The claim was allowed although made before declaration in the action and although the claim was defective in not alleging that the cause of action arose within the jurisdiction. The defect was held to be cured by affidavit.

A.-G. v. *Catharine Hall*, [1820], Jac. 381. A devise was made to the college for founding additional fellowships and scholarships. Certain stipends were to be paid out of rents, the surplus was to be thrown into common stock for the benefit of the college. It was decided that a largely increased surplus could not be used to augment the value of the new foundations.

A.-G. v. *Brasenose College*, [1834], 2 C. & F., 295. The college was held entitled to all surplus income of a charity after providing a fixed charge for Middleton school. This was followed by *A.-G.* v. *Magdalen College*, [1847], 10 Beav., 402, where the master and usher of Magdalen school were held not entitled to increased stipends owing to the increased revenue of the college.

A.-G. v. *Sibthorp*, [1826], 2 Russ. & M., 107. A devise to the fellows and demies of Magdalen was held to be too indefinite to be carried into effect, nor could it be supported as a devise to

(*p*) *Mackintosh* v. *Townsend*, [1809], 1 Ves., 330.

the college for the benefit of part of its members. Distinguish from the *Trinity College Case*, p. 71. There the lessor was a corporation and there was no doubt of its identity. In this case the corporation was not named at all, the objects of the gift were unnamed members of it.

Ex parte Inge, [1831], 2 Russ. & M., 590. Where out of several candidates for a close fellowship at St. Catharine's only one fulfilled all the requirements of the endowment, that fact did not exempt him from the necessity of undergoing a qualifying examination. The standard of merit on such examination should be relative, not positive, for the purpose of ascertaining that he is duly qualified, and having no regard to the comparative qualifications of his competitors.

Re St. John's College, Cambridge, [1837], 2 Russ. & M., 603. A close fellowship was founded for the benefit of a native of Beverley "if any such shall be found within the university." If he is found not "able" after examination, the college may elect another candidate. The court will not review the judgment of the college as to ability.

A.-G. v. *Caius College*, [1837], 2 Keen, 150. A college is under no obligation to accept an accession to its foundation, but if it do, it is bound strictly to adhere to the trust. The court refused to appoint new trustees where there had been errors and misapplications of trust funds for two centuries.

R. v. *Barnard*, [1837], 7 C. & P., 784. At Oxford Assizes before Bolland, B. The defendant was indicted for false pretences in falsely pretending that he was a commoner of Magdalen and so obtaining a pair of boot-straps from a bootmaker. He went into the shop wearing a commoner's cap and gown and stated that he was a member of Magdalen. Evidence was given that there were no commoners at Magdalen, and that there was no such name on the books. The learned judge in summing up said, "If nothing had passed in words I should have laid down that the fact of the defendant's appearing in the cap and gown would have been pregnant evidence from which a jury might infer that he pretended that he was a member of the university."

Sandys v. *Sandys*, [1840], 1 Q. B., 316, (n). A feigned issue to try the question who had the right to nominate a fellow on the Parke foundation at Peterhouse under a deed of 1686. The parties had each obtained a rule nisi for a mandamus to admit his nominee. The plaintiff was held entitled to nominate, after having done so for twenty years, without being called on to prove the extinction of elder branches of the family.

Hampden v. *Macmullen*, [1843], 2 Notes of Cases, App. i. This appears to be the only reported case heard before the

Delegates of Appeals in Congregation. It was an appeal from the Chancellor's court where Mr. Macmullen, Fellow of Corpus, proceeded by citation and libel against Dr. Hampden, Regius Professor of Divinity and afterwards Bishop of Hereford, for refusing to attend the disputation of Mr. Macmullen for the degree of B.D. Dr. Kenyon, the Assessor, admitted the libel (*q*). The Court of Delegates, six in number, reversed the finding of the Assessor, holding that the libel was wrongly admitted, there being no breach of duty by the Regius Professor for which an action of damages would lie.

A.-G. v. *Drapers' Company*, [1843], 6 Beav., 328, carries *A.-G.* v. *Caius College* a little further. A college may accept an accession to the foundation qualified by conditions if the founder of the accession so agree with the college.

Ex parte Moorsom, [1818], 2 Phill., 521. The Statutes of University provided that a fellow on the foundation of Henry IV should be a native of the diocese of York or Durham and *in sacerdotio constitutus*, a fellow on the foundation of William of Durham should be *ornatus moribus facultatibus pauper* and *casteris paribus* should be preferred to others who were born in parts of the country more distant from the city of Durham. Moorsom was born nearer to that city than Conington, who was elected. Bright, the other successful candidate, had not taken orders, but was qualified to be admitted to deacon's orders within the six months which must elapse between election and admission. Moorsom's petition for admission to one or other of the fellowships was heard before Lord Cottenham, L.C., as representing the Queen, the visitor of the college. The Lord Chancellor held that *casteris paribus* meant when the candidate claiming preference was equal to the others in other respects. He was not to be elected regardless of merits (*r*). It was also held that the condition *in sacerdotio constitutus* would be satisfied by taking deacon's orders within the time between election and admission. In an anonymous case, cited in Moorsom's case, Lord Brougham seems to have held that the rule in election to an open fellowship was *detur digniori*, to a close one *detur sed digno*. The Lord Chancellor also referred to the case of Dr. Ellerton's petition in 1803. Ellerton had been a candidate for an Ingledew fellowship

(*q*) Libel in civil law procedure, at that time the procedure in the Chancellor's court, was the *libellus conventionis* of Cod. vii, 40, 8, and other passages in the Code of Justinian. It was the plaintiff's statement of claim.

(*r*) Compare *Re Nettle's Charity*, [1872], L. R., 14 Eq., 434, where a similar construction was put on *casteris paribus* in a school case.

W.U.

at Magdalen, to which Collins was elected. Collins was a layman and the election was set aside by the visitor on the ground that by the time of admission as *socius perpetuus* he could not possibly be in priest's orders. The words in the Magdalen statutes, *in ordine sacerdotali constituti*, were perhaps stronger than those in the university statutes, as the *ordo* is named.

Glasgow College v. *A.-G.*, [1848], 1 H. L. 800. By numerous schemes confirmed by decrees in Chancery from 1698 to 1759 the trusts of the will of John Snell for the benefit of Glasgow students at Balliol had been administered cy-près, it having been found impossible to carry out strictly the intention of the testator. Under these decrees students had been for many years admitted at Balliol without regard to their destination for holy orders and *sed* contrary to what was contemplated by the original trusts. Glasgow College was Presbyterian while Snell was a student there, but Episcopalian at the dates of his will and death. Soon after his death Presbyterianism became the form of church government in Scotland. In 1845 an information was filed at the relation of certain members of the Episcopal Church of Scotland, and a decree was made in Chancery, directing an inquiry as to so varying the former decrees as to make the charity more conducive to providing the Episcopal Church with competent clergy educated at Glasgow and Balliol. This decree was reversed by the House of Lords, as the proposed inquiry contemplated a new scheme inconsistent with those under which the charity had been administered for a very long period.

Feistel v. *King's College*, [1853], 16 Beav., 491. The assignment by a fellow of a college of the profits of his fellowship is not contrary to public policy. There is nothing in the nature of the income of a fellowship from which it can be inferred that the profits are not assignable in equity. Although the assignment may be contrary to the implied intention of the founder and to the spirit of the statutes and a violation of the fellow's duty to his college, a court of equity will not declare it void.

Re Storie's University Gift, [1860], 30 L. J., Eq., 192. A testator in 1674 devised certain lands for maintaining and bringing up three boys from Wakefield at one of the universities. A scheme framed in 1825 declared that the boys should be chosen from among those who had been for three years at the free school. Lord Romilly, M.R., decided that this did not mean the three years immediately preceding the election, but that a boy who had been three years at the school was eligible, though he had left five years before the day of election. This decision was reversed by the Lords Justices of Appeal, who determined that the three years must be an entire period immediately preceding the

election. But they refused to disturb the position of the elected candidate.

Kemp v. *Neville*, [1861], 10 C. B., N. S., 523. This has become one of the leading cases in constitutional law. The plaintiff, a dressmaker at Cambridge, sued the Vice-Chancellor, the Master of Magdalene, for assault and false imprisonment in the Spinning House, making her wear other clothes than her own, and doing other things incident to the imprisonment. The defendant justified under a charter of the third year of Elizabeth empowering the university by its officers to search the town of Cambridge for common women and others suspected of evil, and to punish such persons as they should upon search find guilty or suspected of evil. He also pleaded that T. S. Woollaston, the proctor, holding the office named in the charter and in the Cambridge Award Act, 1856, found the plaintiff and other women assembled in a carriage with scholars of the university in a public street in the town. Further, that reasonably suspecting the plaintiff of evil, that is, of being in company with the scholars for idle, disorderly, and immoral purposes, the said Woollaston apprehended the plaintiff and brought her before the defendant for examination, whereupon the defendant heard and examined the plaintiff and was satisfied of the matters aforesaid and caused her to be punished by imprisonment for five days in a fit and proper place of confinement, the change of clothes being part of the reasonable discipline of such place. The plaintiff swore that there was no warrant of commitment, no evidence of character allowed to be called, no witnesses examined in her presence, and no witnesses examined on oath. She also denied that she had any disorderly or immoral purpose. The jury found that the proctor had reasonable ground for suspicion, that the defendant did hear and examine the plaintiff, but that he had not made due inquiry into her character. On these findings Erle, C.J., delivered the considered judgment of the Common Pleas that the Vice-Chancellor was judge of a court of record and that as the charter defined no mode of procedure, either for hearing, determination, or commitment, no action of trespass lay for the imprisonment, although the prison was a franchise, and not a common gaol. The Court relied partly on an early seventeenth century case where it was said *nulla curia quae recordum non habet potest finem imponere neque aliquem carceri mandare, quia ista spectant tantummodo ad curias de recordo* (*s*). The Court further laid

(*s*) *Beecher's Case*, [1609], 8 Rep., 59. This case is inconsistent with *Bonham's Case*, [1610], 8 Rep. 114. The reason as given by Holt, C.J., is a very curious one. He says in *Groenvelt* v. *Burwell*,

down the more important general principle that no action lies against a judge for an adjudication to the best of his judgment on a matter within his jurisdiction, and a fact so adjudicated by him cannot be put in issue in an action against him founded on such adjudication.

Pusey v. *Jowett*, [1863], Annual Register, 54. This was a proceeding instituted in the Oxford court for heresy contained in certain published writings of the defendant. The defendant pleaded to the jurisdiction of the court. The assessor (Dr. Montague Bernard) held that he had a discretion and that in the use of that discretion he must decide that he had no jurisdiction to deal with an ecclesiastical offence which was not provided against by the statutes of the university.

Thomson v. *London University*, [1864], 33 L. J., Ch. 624. The university conferred on the plaintiff a gold medal, he having been the candidate who had obtained the highest number of marks in the examination for the LL.D. degree in 1861. In 1864 it was discovered by the Senate that the examiners had made an error in the mode which they had adopted to ascertain the highest number of marks. The Senate thereupon determined to award a second gold medal to the candidate to whom according to their view the medal ought to have been awarded. The plaintiff filed his bill against the university and the other candidate on the ground that the plaintiff had become a candidate and paid his examination fee after learning from the registrar that the examination would be conducted and the marks ascertained in the mode which actually happened. The prayer of the bill was that the university might be restrained from awarding the second medal, that the other candidate might be restrained from keeping it, and that the university might be restrained from allowing to appear in the calendar anything derogatory to the plaintiff as sole gold medallist. Kindersley, V.C., held that he had no jurisdiction to entertain the suit, the matter being solely within the jurisdiction of the visitor, and even though the matter were one falling within the cognisance of the Court, the plaintiff had shown no equity.

Neio v. *Bonaker*, [1867], L. R. 4 Eq., 655. A testator gave certain funds to the President and Vice-President of the United States and the Governor of Pennsylvania on trust to build and endow a college for the instruction of youth in the State of Pennsylvania, and that a professor should be engaged to inculcate the natural rights of black people. The trustees disclaimed

[1697], Carth., 491, that Coke desired to support a graduate of Cambridge against the College of Physicians in order to prevent what he considered an affront to the university, which he much venerated.

the gift. The Court held that it had no power to enforce the trust or administer cy-près, and the funds fell into the residue.

A.-G. v. *Sidney Sussex College*, [1869], L. R., 4 Ch., 722. Francis Combe in 1641 devised lands to Sidney and to Trinity, Oxford, "for the only use, education in piety and learning of four of the descendants of my brothers and sisters, and three of the descendants of the brothers and sisters of my first wife, and three of the descendants of the brothers and sisters of my second wife, or in default of such" to certain poor kin. The two colleges accepted the gift, and each had always required that those persons who claimed the benefit of it should become members of the college, and when there were no such claimants each college had appropriated a moiety of the rents to its own purposes. It was held by Lord Hatherley, L.C., that any descendants claiming the benefit of the gift must become members of one of the colleges and that, subject to the trust, the colleges were entitled to the lands in equal moieties. By a statute framed for Sidney in 1860 the emoluments, subject to the rights of any persons beneficially interested under the will, were to be carried to the general funds of the college. It was held that as this statute was *intra vires* of the university commission, Sidney took one moiety of the rents and profits freed from the charge of educating descendants of the testator, and that a scheme must be prepared as to the moiety of Trinity.

Barnes v. *Peters*, [1869], L. R. 1 C. P., 539; *Tanner* v. *Carter* and *Banks* v. *Marshall*, [1886], 16 Q. B. D., 231. The first case was an appeal from the revising barrister of the borough of Cambridge, who had disallowed the votes for the borough claimed by a fellow, a scholar, and a pensioner. It was held that none of the claimants was entitled as a lodger under the Representation of the People Act, 1867. The position of a fellow residing in college is now altered by the Registration Act, 1885, s. 15, under which he has a vote as occupier for the city of Oxford or borough of Cambridge. The attempt to secure a lodger vote for an undergraduate over twenty-one having failed, an attempt was made in the second and third cases to become qualified for the occupation vote. Appeals were brought from the revising barristers of Oxford and Cambridge, and the first decision was substantially followed, the ground was that undergraduates occupying rooms in college are under regulations which do not allow them to reside in the rooms during certain parts of the year without the express permission of the college authorities. The decision would no doubt be the same in the case of undergraduates residing in lodgings, as the right of continuous occupation is equally subject to disciplinary regulation.

Re Meyricke Fund, [1872], L. R., 7 Ch., 500. Motion to commit the bursar of Jesus, Oxford, for refusing to make discovery of the documents of the fund, dating from 1712. Held, affirming Wood, V.C., that discovery must be made and the college must pay costs. The Endowed Schools Commission have power to inquire into the endowment of exhibitions restricted to a school or district. Wales is such a district. The judgment must now be read as modified by the Welsh Intermediate Education Act, 1889.

Yates v. *University College, London*, [1875], L. R., 7 H. L., 438. The expression of an intention accompanying a bequest does not necessarily constitute a condition on which the bequest is to take effect or be defeated. The testator may not fully effectuate his expressed intention and the bequest may still be valid. A testator made a gift, after a life estate to his widow, "to University College, London, for the purpose of founding in it a new professorship in archæology, for the regulation of which professorship I purpose preparing a code of rules and regulations, which I intend to authenticate under my own hand." The testator died without making any rules. It was decided by the House of Lords that the bequest was valid and was not affected by the subsequent provision as to rules, the acceptance of which by the college had been rendered impossible by the act of the testator himself.

R. v. *Hertford College*, [1878], 3 Q. B. D., 639. By the Hertford College Act, 1874, Magdalen Hall was dissolved and Hertford created. An endowment for a lay fellowship was afterwards accepted by the college. It was restricted to members of the Churches of England and Ireland and certain other episcopal churches in communion with those churches. The prosecutor, Tillyard, 8th classic in 1875, presented himself for examination in 1875 "as a nonconformist candidate." He was informed by the Principal that he might be examined if he wished, but that he would not be elected even though he stood at the head of the list. He did not present himself at the proper time, and Maude, a duly qualified candidate, was elected after examination. Tillyard did not appeal to the visitor. The prosecutor applied to the Queen's Bench division for a mandamus. The college demurred to the return, and the Queen's Bench granted the mandamus. On error the Court of Appeal reversed the judgment. The main grounds as stated by Lord Coleridge, C.J., who delivered the judgment of the court, were three. (1) The remedy, if any, was by appeal to the visitor. (2) There was no refusal to examine the prosecutor, and even if there had been, a mandamus would not lie where the office was filled by a duly qualified candidate. (3) The

University Tests Act, 1871, is confined to colleges subsisting before it was passed and does not prevent the creation of new colleges or new endowments in old colleges, confined to members of a particular religion.

Ginnett v. *Whittingham*, [1886], 16 Q. B. D., 761. This was a claim by the Chancellor of Oxford of conusance in an action for libel brought in the High Court. It was made after delivery of the plaintiff's statement of claim in the action. The plaintiff was a circus proprietor, the defendant an undergraduate of Worcester. The defendant had written letters to the "Daily Chronicle" and other newspapers reflecting on the plaintiff's circus on Gloucester Green as a resort of bad characters. The claim to conusance under seal of the Chancellor was made under the charter of 14 Hen. VIII, as set out in *Registrum Privilegiorum Almæ Universitatis Oxoniensis* (1770), s. 37 of which is the non-intromittant clause, ratified by the statute of 13 Eliz. The claim was allowed, but Lord Coleridge, C.J., admitted that it was "a most inconvenient privilege." The claim was also held to have been made in time.

Re Pauncefort, [1889], 42 Ch. D., 624. Edward Pauncefort by his will dated 1723 gave property to the Corporation of the Sons of the Clergy on trust to divide the income thereof equally between ten of the servitors of Christ Church, such as the authorities should recommend "for their sobriety, diligence at their studies, and of parts fit for a minister of the Gospel and designed for holy orders." By statutes made for Christ Church under the powers given by the Act of 1877 and approved by the Queen in Council, it was provided that the Pauncefort exhibitions should be applied to the support of certain college exhibitioners without any condition as to their being designed for holy orders. Stirling, J., held that the statutes having been duly approved were binding on the corporation notwithstanding the will of the founder.

R. v. *Eledon*, [1891]. Cambridge Assizes, before Pollock, B. The prisoner was indicted for breaking out of the spinning house, to which she had been committed by the Vice-Chancellor on the unsworn evidence of the proctor and his constables. The university relied on a charter of James I of 9 March, 160⅘, giving it the power to apprehend bad characters. The charter was produced by the registrar. The learned baron held that the prisoner was in lawful custody and she was found guilty of prison breach.

R. v. *Vice-Chancellor of Cambridge*, [1891], 8 "Times" L. R., 151. A rule nisi for a writ of habeas corpus on behalf of Daisy Hopkins to release her from imprisonment in the spinning house

under the warrant of the Vice-Chancellor "for walking with a member of the university." The real question was whether this euphemistic phrase—there being no allegation of any immoral purpose—brought Miss Hopkins within the words *reas seu suspectas de malo* of the charter of James I. There was also a rule for a certiorari to bring up and quash the proceedings in the Vice-Chancellor's court. The proceedings had been, as in the previous case, in camera on unsworn statements. The rules were made absolute by the Queen's Bench Division on the ground that the words of the charge did not in their natural sense import such an offence as would give the Vice-Chancellor jurisdiction, and that a court cannot assume jurisdiction by interpreting words which do not give it jurisdiction as though they did, and that "walking with an undergraduate" is not an offence known to law. Lord Coleridge, C.J., in his judgment said, "I desire to say that not only in my opinion is the jurisdiction of the Vice-Chancellor most important to be kept up, but that in administering it he was actuated simply by a desire to do his duty. . . . The matter was fully heard by him and he exercised his judicial functions in the most legitimate manner. It is, however, another matter whether when the court has to consider the conduct of a functionary clothed with a great and exceptional authority, it can see that he has acted within the limits of that authority." This and the previous case led to the making of the Act of 1894, which has been already mentioned in the chapter on Discipline.

Hopkins v. *Wallis*, "Times," 25 and 26 March, 1892. The prosecutor in the preceding case brought an action against the pro-proctor at Ipswich Assizes. Two questions were left to the jury: (1) Had the defendant reasonable ground for suspecting the plaintiff of evil? (2) Did he act in good faith in directing her arrest, or from any and what improper motive? The jury found for the defendant.

Boyer v. *Bishop of Norwich*, [1892], A. C., 417. Appeal to the Judicial Committee of the Privy Council from the official Principal of the Arches Court of Canterbury rejecting the appellant's libel in a cause of duplex querela. The question was whether the presentation of the appellant by Emmanuel College to the rectory of Brantham in Norfolk was void or not under 13 Anne, c. 13. By an Order in Council made in 1878 a certain statute of the college was approved. The statute provided that the heir of Sir W. Dixie should have the perpetual right of nominating to the college fit persons for presentation to Brantham and other rectories, graduates of Emmanuel with certain qualifications. The appellant was a graduate of Emmanuel and possessed such qualifications. Sir A. Dixie, the heir of

Sir W. Dixie, duly nominated the appellant, the promovent, to the college, and the college presented him to the respondent. The respondent took objection to the presentation on the ground that Sir A. Dixie was a Roman Catholic. Held, affirming the judgment of Lord Penzance, that the presentation was void, as it could not be treated as a presentation by the college itself following a lapsed nomination.

Rooke v. *Dawson*, [1895], 1 Ch., 480. The plaintiff claimed a declaration that he was entitled to a Bousfield scholarship at Mill Hill School. By a deed of 1851 it was provided that the trustees of the deed should stand possessed of a certain sum, the proceeds to be applied towards the support of the holder of the Bousfield Scholarship at University College, London, or New College, London. The plaintiff and another duly presented themselves for examination in 1894. The plaintiff obtained 570 marks, the other candidate 496. On this the plaintiff entered as a student at University College. The trustees refused to award him the scholarship. The main point in the case was whether the authority of the Charity Commissioners was necessary for the proceedings. It was held that it was, and that as it had not been obtained, the motion for a declaration failed. *With regard to awarding on the results of an examination*, Chitty, J., said, "In my opinion there is nothing more than a proclamation that an examination for a scholarship will be held, and there is no announcement that the scholarship will be awarded to the scholar who obtains the highest number of marks. . . . It was not coupled with any statement to the effect that the boy who had the greatest number of marks should have the scholarship."

Re the University of London Medical Sciences Institute Fund, [1909], 2 Ch. 1. In 1902 the Senate of the University resolved to take steps to establish a Medical Sciences Institute. Alfred Beit gave a donation of £25,000 payable in five annual instalments. After paying three instalments he died, having by his will bequeathed £25,000 to the Institute. The legacy was paid. Subsequently the scheme was abandoned. The question was then raised whether the sum should be repaid to the executors or was impressed with a charitable trust and to be administered *cy-près*. The Court of Appeal decided in favour of the former alternative, as no general charitable intent was shown.

AMERICAN CASES

Dartmouth College v. *Woodward*, [1819], 4 Wheaton, 518. The charter granted by George III to the trustees of Dartmouth

College in New Hampshire in the year 1769 is a contract within the meaning of Art. I, s. 10, of the Constitution of the United States, declaring that no State shall make any law impairing the obligation of contracts. The charter was not avoided by the Revolution. An Act of the legislature of New Hampshire altering the charter materially without the assent of the corporation is a law impairing the obligation of a contract and is unconstitutional and void. That a corporation is established for purposes of education does not *per se* make it a public corporation liable to the control of the State legislature. By its charter Dartmouth College is a private corporation (*t*).

This celebrated decision of the Supreme Court has been inserted because it is one of the leading cases in the constitutional law of the United States, and has at the same time some interest from the point of view of university and college law. Two other cases bearing on the point may be noticed. The original grant of a charter by the legislature of a State is constitutional, *Vincennes University* v. *Indiana*, [1852], 14 Howard, 268. An Act of the legislature of Maine removing the President of Bowdoin College from his office was held to be a breach of Art. 1, s. 10, and therefore unconstitutional, *Allen* v. *McKean*, [1833], 1 Sumner, 276.

Sturges v. *Colby*, [1878], 2 Flippin, 163. Application in the Circuit Court of Ohio by the assignee of a bankrupt's estate against Denison University. The bankrupt had given a subscription towards the endowment of the university, and the question was whether this was a contract made on good consideration and therefore valid against the assignee, or whether it was a voluntary gift liable to be defeated by the bankruptcy of the donor. The court held that the university was entitled to the gift on the ground that a gratuitous subscription towards the endowment of a university becomes a fixed legal obligation when the stipulated condition is performed by the college on its side. In this case the condition was the building of the college; the building was completed on the strength of the subscription of the bankrupt and others, and it was reasonable that the officers of the corporation should rely on the subscriptions as part of their resources and incur liabilities on the strength of them.

Closely analogous is the later case of *Irwin* v. *Lombard University*, [1897], 56 Ohio, 9. Plaintiff's intestate gave his promissory note "for the endowment of" the defendants. On the strength of the note the university incurred liabilities. It was held that there was sufficient consideration and that the note

(*t*) See S. Shirley, The Dartmouth College Causes (1879).

was good. "The consideration is the accomplishment of the purpose for which the university was incorporated."

In the Matter of the Estate of John McGraw, [1888], 111 N. Y. 66. By the charter of Cornell University it is allowed to hold property not exceeding three million dollars. The testator by his will made it a gift of one million dollars, it having at the time property up to the amount named in the charter. It was argued that the university had a *prima facie* right, subject to being dispossessed by the suit of any one interested. But the Court of Appeals held that the prohibition was absolute, that there was no forfeiture of the gift to the State, and that the heir and next of kin took on a lapse.

Markley v. *Whitman*, [1893], 95 Mich., 236. The game of "rush," as played by students of a college, constitutes an assault, and a student who is injured has the same right to damages as a stranger.

Berry v. *Wilcox*, [1895], 44 Nebr., 82. The question of the return of a city clerk for the city of University Place depended on the validity of the votes of seventeen students of the Wesleyan university, who all voted one way. Held that such students, where they are emancipated and support themselves, regarding the college as their home, may, if qualified to vote, do so at the place where the college is located.

Bank v. *Morrow*, [1897], 99 Tenn., 527. The defendant donated a sum of 5,000 dollars to the Centenary Female College at Cleveland. The board of the college, in recognition, gave him the right of appointing to a perpetual scholarship. On his bankruptcy the officer attached the scholarship. The Supreme Court on appeal from the Court of Chancery Appeals, held that such a right as that in question is not liable to be seized for debt.

SCOTLAND

Before the Scottish universities existed Scottish students had to find their university education in England or France (*a*). If they chose England, the leave of the King or a safe-conduct from the Chancellor seems to have been necessary (*b*).

The Scottish universities were, with the exception of Edinburgh, founded by papal bull, St. Andrews in 1411, confirmed by Benedict XIII in 1413, Glasgow by Nicholas V in 1450, with

(*a*) As in the classical period when

Gallia causidicos docuit facunda Britannos.

(*b*) Examples will be found in the Calendar of Documents relating to Scotland, vol. iv, 407, 655, (1888).

the same rights as Bologna (*c*), Aberdeen in 1494. New Aberdeen or Marischal College was founded by charter of James IV in 1593. Edinburgh was founded by the town council of Edinburgh under a charter of James VI in 1582, ratified by an Act of 1621. Until 1708 it was a college and not a university, and Glasgow seems to have been regarded as both. Several changes were made before recent legislation. St. Salvator and St. Leonard Colleges at St. Andrews were combined in 1747 (*d*), the two Aberdeen colleges not until 1860, with precedence from 1494. The universities, once founded, were regulated by Acts of the Scottish Parliament and of the Imperial Parliament, and by their own statutes and regulations (*e*), all subject to judicial interpretation. There were numerous Acts before the union, especially those enforcing orthodoxy. 1579, c. 12, punished as vagabonds scholars of the universities asking alms without the licence of the universities. 1579, s. 62, directed the course of studies at St. Andrews. 1621, c. 25, allowed directors of universities to wear velvet, satin, or silk, but the trimming must have been of silk and not of gold or silver lace. 1633, c. 6, gave a right of action to colleges in the event of inversion of mortifications. Several commissions for visitation were issued, the earliest being under the authority of an Act of 1578.

Before the legislation of 1858 the constitutions of the universities varied. Thus at Glasgow there were three courts, the Senate, the Faculty, and the Comitia, as well as the corrective disciplinary *Jurisdictio Ordinaria* (*f*). The college system never attained the same importance as in England, and the degree of B.A. does not exist. The nearest approach to it is the division of the students in each university—except Edinburgh—into four nations, varying in name (*g*). At one time each nation had its proctor, as at Oxford and Cambridge. Fellowships are of modern foundation and generally of small value and very limited

(*c*) Glasgow received a royal charter in 1577. The old constitution will be found set out in *Liechman* v. *Trail*, [1770], Morison, Dict. of Decisions, College, Appendix, No. 1.

(*d*) St. Mary's College is still separate.

(*e*) Some of these would hardly be followed now, *e.g.* a Glasgow statute of the seventeenth century making expulsion the penalty for bathing.

(*f*) Four is the usual number in foreign universities where nations exist. Provision for an equality of votes in nations at Glasgow and Aberdeen is made by s. 14 of the Act of 1889.

(*g*) This phrase is derived from Roman law, but is used in a very different sense. There it denoted a branch of the praetor's authority in civil actions.

periods. Bursaries are filled partly by examination, partly by private nomination. The Educational Endowments Act, 1882, makes provision for regulating them by scheme (*h*). In 1831 a commission reported on the constitution of the universities, but its recommendations were not adopted in legislation until 1858, when the Universities (Scotland) Act (21 & 22 Vict., c. 83) was passed. It constituted a uniform system of government for the universities (*i*), the *Senatus Academicus*, consisting of the Principal (*k*) and professors, as the ordinary educational and disciplinary authority, subject to review by the university court, consisting of the Lord Rector, elected by matriculated members, the Principal, and the Assessors (*l*). The graduates form the general council. Power was given to the commissioners nominated by the Act to, *inter alia*, report how far it was practicable and expedient to found a national university of which the existing universities should be colleges. Such a federal university has never come into being. The Act further provided for the universities suing and being sued under their corporate names. The Secretary of State for Scotland Act, 1885 (18 & 19 Vict., c. 61), transferred to the Secretary for Scotland all powers and duties vested in a Secretary of State with regard to the universities of Scotland. The constitution of the universities was again amended by the Universities (Scotland) Act, 1889 (52 & 53 Vict., c. 55), passed to give effect to the report of the royal commission which appeared in 1878. It is to be read and construed with the Act of 1858 (*m*). The number of persons constituting the Courts

(*h*) Before this Act the principle of *cy-près* had been applied where bursaries were substituted for apprenticeship fees in the case of a charity established by Bishop Burnet in the seventeenth century. *Burnet's Trustees*, [1876] 4 S. C. (Fourth Series), 127.

(*i*) Previously the regulation of Edinburgh had been by the magistrates and town council. See *Magistrates of Edinburgh* v. *Professors of the University*, [1829], 7 S. C. 255.

(*k*) Where no other provision is made, the Principal is Vice-Chancellor. Before the Act of 1858 there had been inconsistent decisions whether the Principal had a casting vote in the Senate. In *Thom* v. *Dalrymple*, [1763], 6 Pat. App., 737, it was held that the Principal of King's College, Aberdeen, had no such vote. In *Playfair* v. *Macdonald*, [1809], 5 Pat. App., 266, it was held that the Principal of St. Andrews had. The Act of 1858 gives the Lord Rector a casting vote in the court.

(*l*) This is another instance of a Roman law phrase used in a sense different from its original one. The Roman *assessor* was the *judex ordinarius* in a province. See Dirksen, *s.v.*

(*m*) One of the quaintest provisions in the Act is s. 31, which provides for the redemption of a chalder of meal annually due by the

is extended and their powers defined. They are the financial (*n*) and appellate disciplinary authorities, and appoint professors where the Crown has not the right of appointment (*o*). The *Senatus* and the General Council remain with little alteration. £18,000 annually is to be distributed among the universities. The commissioners appointed by the Act were enabled, among other powers, to make provision for students' representative councils, to enable women to graduate, and for the affiliation of new colleges, such as the University College of Dundee (*p*). The Act constituted a Scottish Universities Committee, similar to the Committee for Oxford and Cambridge under the Act of 1877. Its functions ceased in 1898 (*q*). The annual payments may, by the Education (Scotland) Act, 1908, be extended on application by the University Courts, or any of them, after report of a special committee appointed by the Secretary for Scotland.

The imposition of religious tests at the universities began soon after the Reformation. 1567, c. 11, enacted that all universities and colleges were to be reformed, and that none were to have charge and care thereof, or to instruct the youth privately or openly, but such as should be tried by the superintendents or visitors of the Kirk. The Claim of Right of 1689, affirming the principle of several earlier Acts, declared it illegal to send children abroad to be educated as papists. 1700, c. 3, extended this to education by papists within the realm. The effect of 1689, c. 5, 1690, c. 25, and 1706, c. 6 (confirmed by the Act affirming the Articles of Union), was to make it impossible for any one holding

Crown to Glasgow University under charters from Archbishops of Glasgow in 1607 and 1628.

(*n*) The accounts are to be audited annually.

(*o*) Which need not be under the Privy Seal or with the consent of the university, *Muirhead* v. *Glassford*, [1809], Faculty Dec., No. 90.

(*p*) On this point two cases were carried to the House of Lords. In *Metcalfe* v. *Cox*, [1895], A. C., 328, the House held that the appellants were entitled to a reduction of the order of the commissioners as to affiliation of the Dundee College on the ground that it was in the nature of an ordinance and had not been laid before Parliament and submitted to the Queen in Council. The new Court of the university of St. Andrews was also held not to have been duly constituted. In *Medcalfe* v. *Cox*, [1896], A. C., 647, the House held that the Act gave no power to revoke an affiliation of the nature of an incorporation which had the effect of merging the college into the university with a joint object, *i.e.* the establishment of a school of medicine.

(*q*) The Act provided for the possible combination of the Courts into a General University Court; but this, like the similar one as to a national university in the Act of 1858, has remained inoperative.

office in a university to exercise any functions unless he had subscribed to the Confession of Faith, conformed to the worship of the Church, and taken the oath of allegiance. The Act of Union, 1707, s. 3, enacts that the four universities and colleges as then established by law shall continue within the Kingdom for ever, and that all professors, principals, regents, masters, or others bearing office in any university, college, or school within the Kingdom shall acknowledge the civil government in manner prescribed or to be prescribed by Act of Parliament, and shall subscribe to the Confession of Faith and practise and conform themselves to the worship in use in the Church of Scotland. A similar policy was followed by later Acts, *e.g.*, the Disarming Act of 1746 (19 Geo. II, c. 39, s. 51), and 43 Geo. III, c. 54. 16 & 17 Vict., c. 89, relieved the professors in lay chairs from the subscription. The Act of 1858 by s. 3 provided as to the Principals of Glasgow, Aberdeen, and Edinburgh that they were not to be deemed professors of theology and might be laymen. 22 and 23 Vict., c. 24, relieved the principals from the subscription, with the exception of the Principal of St. Mary's College in St. Andrews. The commissioners under the Act of 1889 were empowered to make a special report as to whether any and what changes in the subscription of tests by principals, professors, and other university officers are necessary. In 1892 a special report was issued. It was in favour of abolishing tests and retaining the faculty of theology, the right of election to it being in the hands of the Court and of representatives from the Presbyterian Churches.

Several other modern Acts affect the universities, *e.g.*, 24 & 25 Vict., c. 90, dealing with the disposal of the property of Edinburgh. The Educational Endowments (Scotland) Act, 1882, does not apply to any endowment belonging to or administered by or in the gift of any of the universities of Scotland or any of the colleges of such universities, unless the *Senatus Academicus* of such university shall intimate in writing to the commissioners appointed by the Act their consent that such endowment shall be dealt with under the Act. The commissioners were empowered to frame schemes dealing with bursaries, subject to approval by order in council. Similar provisions are made by the Education (Scotland) Act, 1908.

The right of returning members to Parliament was given by the Representation of the People Act (Scotland), 1868, under which the Scottish universities are to return two members, one by Edinburgh and St. Andrews combined, and one by Glasgow and Aberdeen combined. The mode of election depends chiefly on the Act of 1868 and on the Elections Amendment (Scotland) Act, 1881. The qualification is by the latter Act registration of a

graduate as a member of the General Council (*q*). The election, as in England, may be by voting papers.

The Scottish universities have some privileges, though not as numerous and important as in England. There is no university tribunal like the Chancellor's court; on the other hand, the students' representative council, though existing at most of the modern English universities, is unknown at Oxford and Cambridge. University students' unions are exempt from the provisions of the Licensing Acts relating to Scotland. The Finance Act, 1895, removed the duty imposed by the Stamp Act, 1891, on admission to the degree of M.D. As to copyright, the provisions of 15 Geo. III, c. 53, and 5 & 6 Vict., c. 45, apply as to Oxford and Cambridge. By the Militia Act of 1812 professors are exempt from service in the militia. Heritable property acquired for educational purposes is by 31 & 32 Vict., c. 101, s. 26, to vest in the disponees or their successors without transmission or renewal of investiture. Riotous conduct of the students sometimes, as in England, fell within the jurisdiction of the courts (*r*). In some of the older cases traces of an occasional "job" seem to appear. In 1807 the Rector and Masters of St. Andrews were held by the Court of Session to have properly elected on the resignation of a professor, himself and his son as joint professors with survivorship to the son (*s*).

Appendix of Cases

St. Andrews University v. *Lees*, [1859], 21 Court of Session Cases, 566. The Crown, when patron of a chair, may appoint an assistant to the professor, such appointment carrying with it the right to teach.

Greig v. *Edinburgh University*, [1868], L. R. 1. H. L. Sc., 348. The property of the university is not held by the Crown or for the Crown. It is therefore rateable for the relief of the poor. Receipt of the matriculation and class fees is sufficient to create rateable value.

University of Aberdeen v. *Irvine*, [1869], L. R. 1 H. L., Sc., 289. An estate in fee simple was held to have been dedicated for over two centuries for the support of bursaries and to be still subject to the trusts of the original benefaction, the bar of prescription being excluded by the fiduciary relation. The respondent was decreed to account for all rents and profits, including grassums, that had come to his hands since the signetting of the summons.

(*q*) Corrupt payment of a registration fee is punishable as bribery.

(*r*) See Report of the Trial of the Students on the Charge of Mobbing, etc., at the College, Edinburgh, 1838.

(*s*) *Arnott* v. *Hill*, 1 Shaw's Dig., 431. Reversed by the House of Lords in 1809.

Glasgow University v. *Kirkwood*, [1872], 10 Court of Session Cases (3rd series), 1000. The papal and royal grants to the university of immunity from taxation, ratified by Acts of the Scottish Parliament, are to be explained by usage. This usage has confined the immunity to exemption from local taxation in respect of heritable property acquired by the university for university purposes. The exemption is confined to the original site and does not extend to new buildings on a new site after the removal of the university to Partick.

Jex-Blake v. *University of Edinburgh*, [1873], 11 Court of Session Cases (3rd series), 784. From its foundation till 1869 only male students attended the university. In 1869 the University Court, in pursuance of s. 12 of the Act of 1858, made regulations for the admission of women to the study of medicine. It was held by a majority of the Court of Session that having respect to the language of the deeds of foundation of the university and the contemporaneous interpretation by usage, women students were not entitled to study or graduate in the university, that the regulations of 1869 were *ultra vires* of the University Court, and that a reduction of the regulations was unnecessary. Graduation of women has since been allowed by an ordinance of 1892 made under the provisions of the Act of 1889, and the law has come to be in accordance with the opinion of the dissenting judges.

Caird v. *Sime*, [1887], 12 A. C., 326. The appellant was Professor of Moral Philosophy in Glasgow University, the respondent a bookseller at Glasgow. Lectures delivered to students by the appellant were published by the respondent from shorthand notes taken down by a student at the lectures. The Court of Session, on appeal from the Sheriff of Lanark, held that such publication did not constitute an actionable delict and dismissed the appeal. The House of Lords reversed the decision of the Court of Session on the ground that a university professor who delivers oral lectures of his own composition does not communicate such lectures to the whole world so as to entitle any one to publish them in book form without his permission. It makes no difference that he is under an obligation to receive into his class all students possessing the requisite qualification.

General Trustees of Free Church of Scotland v. *Bain*, [1897], 24 R. 492. The Free Church College, being charged with poor and school rates, is liable to inhabited house duty under the House Tax Act, 1851. It is not entitled to the exemption conferred by the Customs and Inland Revenue Act, 1878, as it is not occupied for the purposes of a business or calling whereby the occupiers sought a livelihood or profit.

McCaig v. *Glasgow University*, [1907], S.C. 231. A testator

directed that the revenue of his heritable property should be used for the purpose of erecting monuments and statues of himself and certain members of his family and artistic towers at prominent points on his estates. He appointed the Court of Session trustees, and if the Court should refuse, as it did, then the university, which accepted. It was held not to be a charitable gift, so that the university lost the administration of it.

Nairn and others v. *University of St. Andrews*, [1908], A. C., 147. The appellants were graduates of Edinburgh, enrolled on the General Council of the university. The respondents were the University Courts of St. Andrews and Edinburgh and the chancellors, vice-chancellors and registrars of those universities. Before the general election of 1906 the appellants applied to the registrar for voting papers under the Act of 1881, s. 2, subs. (3). The registrar refused to issue such papers to any women whose names were enrolled on the General Council. The Lord Ordinary and the Court of Session repelled the claim (a) to receive voting papers from the registrar, (b) to vote by duly marking the same, (c), to have their votes so given duly counted. The House of Lords, without calling on counsel for the universities, affirmed the decisions of the Scottish courts. The principle of the decision is put shortly by Lord Ashbourne in his judgment. "It is to my mind impossible to imagine that the legislature should have conferred by a delegation to commissioners (*a*) the power either of extending the franchise themselves to a perfectly new class or by devolution passing on that power to university courts —a power always jealously kept in its own hands." Person in the Acts dealing with parliamentary elections means male person. The case is interesting as having been argued before the House by Miss Macmillan and Miss Simson, two of the appellants.

IRELAND

University history begins with the foundation of Trinity College, at once a college and a university (*a*). It was incorporated by charter of Queen Elizabeth as *Mater Universitatis* (*b*)

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on 3 March, 159½, followed by a series of charters and letters patent from 1637 to 1871. There were also several royal commissions, especially one of 1851 for revising the Laudian statutes of 1637. The visitors were originally seven, but were reduced in 1637 to two, the Chancellor and the Archbishop of Dublin. The Chancellor is appointed by the Senate from three names submitted by the *Caput*. The governing bodies are the Senate or Congregation and the *Caput Senatus*; the latter must approve every grace before its proposal to the Senate. There is also a Council for the regulation of lectures and examinations. 43 Eliz., c. 4, was applied to Ireland by 10 Car. I, sess. 3, c. 1 (Ir.), but in somewhat different terms. It names as being within the purview of the Act the erection, maintenance, or support of any college, school, lecture in divinity or in any of the liberal arts or sciences. Grants of public money were made by 31 Geo. III, c. 4 (Ir.), and other Acts. 17 Car. I, c. 3, (Ir.), preserved the rights of the College after the disturbances of 1641. Exemption from hearth money was given by 14 & 15 Car. II, c. 17 (Ir.), and from the foundling tax by 11 & 12 Geo. III, c. 11 (Ir.). Parts of two Acts of the Irish Parliament affecting the university are still law, 14 & 15 Car. II, c. 2, and 17 & 18 Vict., c. 2, both dealing with property. Among Acts of Parliament of the United Kingdom affecting Trinity College may be named 41 Geo. III, c. 107, 5 & 6 Vict., c. 45 (copyright) (*c*), 8 & 9 Vict., c. 66 (new colleges), 14 & 15 Vict., c. cxxviii (leasing powers) (*d*), 17 & 18 Vict., c. 83 (stamps). Several Acts, especially 17 & 18 Car. II, c. 6 (Ir.), imposed religious tests on professors and graduates. From 1794 Roman Catholics were admitted to degrees but not to scholarships or fellowships, the Roman Catholic Relief Act, 33 Geo. III, c. 21 (Ir.), excepting Trinity College from its provisions, but allowing the rights of Roman Catholics in any college to be founded after the Act by Trinity

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(*c*) The rights of the library of Trinity College under this Act are the same as those of the university libraries of Oxford and Cambridge.

(*d*) A lease for a definite term exceeding thirty-five years granted under this Act (The Trinity College (Dublin) Leasing and Perpetuity Act, 1851) is not to be charged with any higher duty than would have been chargeable if it had been a lease for a definite term not exceeding thirty-five years, Stamp Act, 1891, s. 77, (4).

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College. No such college was ever founded. Certain professors were relieved from tests by 30 Vict., c. 9. Finally, the Dublin University Test Act, 1873 (36 and 37 Vict., c. 21), sometimes known as "Fawcett's Act," abolished tests in all cases except those of professors, lecturers, and graduates in divinity. The university is represented on the General Medical Council by 49 & 50 Vict., c. 48. Graduates, as in England, have certain privileges on entering the profession of a solicitor. See 14 & 15 Vict., c. 88, 42 & 43 Vict., c. 65, 61 & 62 Vict., c. 17. The right of sending two members to Parliament was given by charter of James I in 1614. The number was reduced to one by the Act of Union and again raised to two by the Reform Act of 1832. Scholars of Trinity College, even though undergraduates, have votes at an election for the university, if they are twenty-one years of age. The Educational Endowments Act, 1882, excepts from its provisions the University of Dublin and Trinity College, and endowments for theological and certain other purposes unless with the consent in writing of the governing body of such endowment or the senate or governing body of such university. Residence is not a condition precedent for graduation at Dublin. Degrees are granted to women.

The oldest college next to Trinity is Maynooth, established by an Act of the Irish Parliament in 1795, 35 Geo. III., c. 21 (Ir.), and incorporated by 8 & 9 Vict., c. 25. Grants of money were made by the Irish Parliament from time to time and were continued by the Imperial Parliament up to 1869. In that year the Irish Church Act, 32 & 33 Vict., c. 42, repealed the Maynooth Acts with the exception of a few sections of 40 Geo. III, c. 85 (Ir.), and of 8 & 9 Vict., c. 25. Compensation was given to the college for the loss of the grant and the debt of the college to the Public Works Commissioners was remitted. The Catholic University became an extension of Maynooth, governed by the archbishops and bishops and a rectorial council, and with colleges at Maynooth, Dublin, Blackrock, Carlow, and Clonliffe. The provisions of 21 & 22 Geo. III, c. 62 (Ir.), forbidding the establishment of a popish university, have thus long been obsolete.

The Queen's University with colleges at Belfast, Galway, and Cork, was established by 8 & 9 Vict., c. 66. A question arose in 1867, but was left undecided, as to the power of the Senate to accept a supplemental charter (*e*).

In 1879 the University Education (Ireland) Act, 42 & 43 Vict., c. 65, dissolved the Queen's University and under the powers of the Act the Royal University of Ireland was created by charter

(*e*) *McCormack* v. *Queen's University*, I. R., 1 Eq., 160.

in 1880. No residence or course of instruction was to be obligatory upon any candidate for a degree, unless in medicine and surgery. By 44 & 45 Vict., c. 52, an annual subsidy of £20,000 was to be made by the Commissioners of Church Temporalities. The statutes of the Royal University were amended in 1897 by royal warrant under the sign-manual. This is mentioned as being a variation from the more usual mode of proceeding by supplemental charter. In 1894 the question arose whether the Presidents and Professors of the Royal University were within the Treasury minute compulsorily retiring civil servants at the age of sixty-five. Sir J. T. Hibbert answered in the negative in the House of Commons. But at the same time such officers may be retired by royal warrant at the discretion of the Crown.

The Queen's and Royal Universities were not conspicuously successful as attempts to deal with the problem of a university in addition to Trinity College. In 1908 a new attempt was made by the Irish University Act, 1908 (8 Edw. VII, c. 38), which dissolved the Royal University and Queen's College, Belfast, and erected two in place of it, one at Dublin and one at Belfast. Queen's College, Cork, Queen's College, Galway, and the new college at Dublin, are to be constituent colleges of the new university having its seat at Dublin (*f*). Power is given to alter and renew charters where expedient. Tests are prohibited. Statutes are to be made by the Dublin and Belfast Commissioners respectively, and to be laid before Parliament. Petitions to disallow a statute or part of it may be referred by the Lord-Lieutenant in Council to the Irish Universities Committee. The £20,000 granted to the Royal University in 1881 is to be apportioned, half to the new Dublin and half to the Belfast University. No part of the sum is to be applied for the provision or maintenance of any church or chapel (*g*). Each university is to have a representative on the General Medical Council. The provisions of the Solicitors Acts are to apply. Compensation to officers of the Royal University is to be given in cases where they are not appointed to equivalent offices in the new universities. No provision is made as to the visitor or Chancellor or as to mortmain (*h*). The governing

(*f*) Called the National University of Ireland. The Belfast foundation is the Queen's University of Belfast.

(*g*) Further annual sums amounting to £82,000 are to be granted by Sch. III, part i, and a lump sum of £280,000 by part ii, the latter for building purposes.

(*h*) Probably the Crown is visitor. The appointment of Chancellor is no doubt provided for by s. 15, putting first appointments in the hands of the commissioners. The mortmain provisions of the Act of 1879 are not repeated in the Act of 1908.

body consists of thirty-five persons in each case. Perhaps the most singular section of the Act is 3 (2), which enacts that "every professor upon entering into office shall sign a declaration in a form approved by the commissioners jointly under this Act, securing the respectful treatment of the religious opinions of any of his class." The provisions of 49 Geo. III, c. 120, as to exemption of graduates from service in the militia appears to be wide enough to include graduates of the new universities. So does the exemption from service on a jury of professors or teachers in any college by the Juries Procedure (Ireland) Act, 1876.

APPENDIX OF CASES

Devit v. *College of Dublin*, [1720], Gilb., 241. An action of ejectment on a lease granted in 1701 by A. Cowper to the plaintiff. The lands were sequestered after the rebellion of 1641 and allotted to E. Cowper, the plaintiff's predecessor in title. The same lands had been granted to the college by letters patent of Queen Elizabeth. In 1598 the college granted them to M. Fitzgerald on a fee farm rent of eight shillings. Fitzgerald was a forfeiting person under the penal laws. 17 Car. I, c. 3 (Ir.), enacted that no lands of which the college was seised in 1641 should be disposed of by the Act. It also provided that the Act should not vest the lands of innocent protestants or innocent papists. Cowper fell within this exception. The Court of Exchequer gave judgment for the plaintiff on the ground that the words in the innocents clause were much stronger than the words in the college clause. Gilbert, C.B., in the course of his judgment said, "I should have all manner of tenderness for the right of the college; they are nurseries of religion and learning and therefore all donations for increase and any mention of their revenue are to be liberally expounded."

A.-G. v. *Flood*, [1817], cited Tudor, Charitable Trusts, 6. A gift to Trinity College for the promotion of the Irish language is a charitable gift (*a*).

R. v. *Trinity College*, [1835], 3 Law Recorder, (N.S.), 150. The college has no discretion to reject persons qualified under the Reform Act, 1832, and claiming to replace their names on the books of the university.

R. v. *Trinity College*, [1815], 9 Ir. L. R., 41. The Queen's Bench granted a mandamus to compel the visitors to hear and determine the appeal of a party who complained of the undue election of a scholar. The appeal of the prosecutor, D. C. Heron,

(*a*) See Parsons' (Earl of Rosse) Observations on the Bequest of Henry Flood to Trinity College, Dublin (1795).

who had been rejected as a scholar on account of his being a Roman Catholic, was afterwards heard and dismissed by the visitors, the Archbishops of Armagh and Dublin, sitting with the Right Hon. R. Keatinge, judge of the Prerogative Court, as assessor.

[1909]. The visitors held that the provisions of Fawcett's Act did not disentitle the Provost to require attendance at chapel, in pursuance of the statute *De Cultu Divino*, from students residing in college.

Ex parte Macdermott and others, [1909], "Times," Oct. 15, 1909. This was a petition to the Judicial Committee of the Irish Privy Council under the Irish Universities Act, 1908, praying that the statutes of the Queen's University, Belfast, as far as they provide that Scholastic philosophy shall be one of the subjects of the Faculty of Arts, be disallowed. The point was whether such philosophy could be taught without allusion to distinctive Roman Catholic dogma and without affecting the non-sectarian character of the university. The Committee dismissed the petition without costs.

INDEX

THE END

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